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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 170289. April 8, 2010]

ROSIE QUIDET, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; WHEN IT EXISTS.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. When there is conspiracy, the act of one is the act of all. Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. However, in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. What is determinative is proof establishing that the accused were animated by one and the same purpose.

2. ID.; ID.; NOT ESTABLISHED IN CASE AT BAR; RULING IN VISTIDO CASE (169 PHIL. 599) APPLIED TO CASE AT BAR.— Taken together, the evidence of the prosecution does not meet the test of moral certainty in order to establish that petitioner conspired with Taban and Tubo to commit the

crimes of homicide and attempted homicide. We agree with petitioner that this case is similar to *People v. Vistido* and the ruling there applies with equal force here. In *Vistido*, we held thus. — There is no question that "a person may be convicted for the criminal act of another where, between them, there has been conspiracy or unity of purpose and intention in the commission of the crime charge." It is, likewise, settled that "to establish conspiracy, it is not necessary to prove previous agreement to commit a crime, if there is proof that the malefactors have acted in consort and in pursuance of the same objective." Nevertheless, "the evidence to prove the same must be positive and convincing. As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principle in criminal law requiring proof beyond reasonable doubt before conviction." xxx. By and large, the evidence for the prosecution failed to show the existence of conspiracy which, according to the settled rule, must be shown to exist as clearly and convincingly as the crime itself. In the absence of conspiracy, the liability of the defendants is separate and individual, each is liable for his own acts, the damage caused thereby, and the consequences thereof. While the evidence shows that the appellant boxed the deceased, it is, however, silent as to the extent of the injuries, in which case, the appellant should be held liable only for slight physical injuries. We reach the same conclusion here.

3. ID.; ID.; ABSENT CONSPIRACY, THE LIABILITY OF THE SEVERAL ACCUSED IS SEPARATE AND INDIVIDUAL; PETITIONER FOUND LIABLE FOR TWO COUNTS OF SLIGHT PHYSICAL INJURIES ONLY; CIVIL LIABILITY THEREOF.— For failure of the prosecution to prove conspiracy beyond reasonable doubt, petitioner's liability is separate and individual. Considering that it was duly established that petitioner boxed Jimmy and Andrew and absent proof of the extent of the injuries sustained by the latter from these acts, petitioner should only be made liable for two counts of slight physical injuries. In addition, he should pay ₱5,000.00 as moral damages to the heirs of Jimmy and another ₱5,000.00 as moral damages to Andrew. Actual damages arising from said acts cannot, however, be awarded for failure to prove the same.

4. REMEDILA LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ACCORDED RESPECT; EXCEPTION; APPLICABLE TO CASE AT BAR.— As a general rule, factual findings of the trial court, which is in a better position to evaluate the testimonial evidence, are accorded respect by this Court. But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. In the instant case, we find that the prosecution failed to prove beyond reasonable doubt that petitioner conspired with Taban and Tubo in committing the crimes of homicide and attempted homicide.

5. CRIMINAL LAW; ATTEMPTED HOMICIDE; COMMITTED WHERE THE STAB WOUNDS SUSTAINED BY THE VICTIM WERE NOT LIFE-THREATENING.— Anent the penalty imposed on Taban and Tubo, in Criminal Case No. 92-080, the CA correctly modified the same. The crime committed was attempted homicide and not frustrated homicide because the stab wounds that Andrew sustained were not life-threatening.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEAL TAKEN BY ONE OR MORE OF SEVERAL ACCUSED, EFFECT THEREOF.— Although Taban and Tubo did not appeal their conviction, this part of the appellate court's judgment is favorable to them, thus, they are entitled to a reduction of their prison terms. The rule is that an appeal taken by one or more of several accused shall not affect those who did not appeal except insofar as the judgment of the appellate court is favorable and applicable to the latter.

7. CRIMINAL LAW; HOMICIDE; CIVIL LIABILITIES OF ACCUSED.— Anent the award of damages for which Taban and Tubo should be made solidarily liable, in Criminal Case No. 92-079, the trial court properly awarded civil indemnity in the amount of ₱50,000.00 to the heirs of Jimmy. Civil indemnity is automatically granted to the heirs of the deceased victim without need of further evidence other than the fact of the commission of the crime. In addition, the trial court should have awarded moral damages in the sum of ₱50,000.00 in consonance with current jurisprudence. As to actual damages, the prosecution was

able to prove burial-related expenses with supporting receipt only to the extent of ₱5,000.00. In *People v. Villanueva*, we held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages for a lesser amount. We explained that it was anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages amounting to less than ₱25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages. Accordingly, an award of ₱25,000.00 as temperate damages in lieu of actual damages is proper under the premises. As to loss of earning capacity, the same cannot be awarded due to lack of proof other than the self-serving testimony of Jimmy's mother.

8. ID.; ATTEMPTED HOMICIDE; CIVIL LIABILITIES OF ACCUSED.— In Criminal Case No. 92-080, the CA correctly ruled that Andrew is not entitled to an award of actual damages for failure to substantiate the same. However, he is entitled to moral damages in the amount of ₱30,000.00 for the pain, trauma and suffering arising from the stabbing incident. It may be noted that the afore-discussed higher indemnities are not favorable to Taban and Tubo who did not appeal, but in line with our ruling in *People v. Pacaña*, they shall be held solidarily liable therefor since these amounts are not in the form of a penalty.

9. ID.; PENALTIES; ACCUSED'S PERIOD OF PREVENTIVE IMPRISONMENT MUST BE CREDITED IN HIS FAVOR.— [T]he records indicate that the three accused were placed under preventive imprisonment prior to and during the trial of this case. This can be surmised from the motion to grant bail filed by petitioner which was subsequently granted by the trial court. It is not clear, however, for how long and under what conditions they were put in preventive imprisonment. The trial court should, thus, determine the length and conditions of the preventive imprisonment so this may be credited, if proper, in favor of the accused as provided in Article 29 of the Revised Penal Code.

APPEARANCES OF COUNSEL

Gapuz and Associates Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Conspiracy must be proved as clearly and convincingly as the commission of the offense itself for it is a facile device by which an accused may be ensnared and kept within the penal fold. In case of reasonable doubt as to its existence, the balance tips in favor of the milder form of criminal liability as what is at stake is the accused's liberty. We apply these principles in this case.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's (CA) July 22, 2005 Decision[1] in CA-G.R. CR No. 23351 which affirmed with modifications the March 11, 1999 Decision[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 20 in Criminal Case Nos. 92-079 and 92-080.

Factual Antecedents

On January 13, 1992, petitioner Rosie Quidet (petitioner), Feliciano Taban, Jr. (Taban), and Aurelio Tubo (Tubo) were charged with homicide in Criminal Case No. 92-079 for the death of Jimmy Tagarda (Jimmy) allegedly committed as follows:

> That on or about the 19th day of October 1991 at 8:00 o'clock in the evening, more or less, at Barangay Looc, Salay, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Feliciano Taban, Jr., Rosie Quidet and Aurelio Tubo, with intent to kill, conspiring, confederating, x x x and [sic] helping one another, taking advantage of the darkness of the night, in order to facilitate the commission of the offense with the use of sharp pointed x x x instruments which the accused conveniently provided themselves did then and there, willfully, unlawfully and feloniously attack, assault, stab one Jimmy Tagarda thus the victim

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[1] *Rollo*, pp. 7-17; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr.

[2] *Id.* at 47-52; penned by Judge Alejandro M. Velez.

sustained several wounds in different parts of his body and as a consequence of which the victim died immediately thereafter.

CONTRARY TO and in violation of Article 249 of the Revised Penal Code.[3]

On even date, the aforesaid accused were charged with frustrated homicide in Criminal Case No. 92-080 for the stab wounds sustained by Jimmy's cousin, Andrew Tagarda (Andrew), arising from the same incident, *viz*:

That on or about the 19th day of October 1991 at 8:00 o'clock in the evening, more or less, at Barangay Looc, Salay, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with the use of sharp pointed x x x instrument, and x x x conspiring, confederating and helping one another, and taking advantage of the night [in] order to facilitate the commission of the offense, did then and there, willfully, unlawfully and feloniously attack, assault, and stab one Andrew Tagarda thereby hitting his left chest and nose, the accused having performed all the acts of execution which would produce the crime of Homicide as a consequence except for reason or cause independent of the will of the accused that is, the stab was deflected by the victim.

CONTRARY TO and in violation of Article 249 in relation to Article 6 of the Revised Penal Code.[4]

Upon arraignment, all the accused entered a plea of not guilty in Criminal Case No. 92-080 (frustrated homicide). Meanwhile, in Criminal Case No. 92-079 (homicide), Taban entered a voluntary plea of guilt while petitioner and Tubo maintained their innocence. Accordingly, on June 24, 1992, the trial court rendered a partial judgment[5] sentencing Taban to imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years, two (2) months and one (1) day of *reclusion temporal*, as maximum, and ordering him to pay the heirs of Jimmy ₱50,000.00 as civil indemnity.[6] Thereafter, joint trial ensued.

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[3] Records, p. 1.

[4] *Id.* at 7.

[5] *Id.* at 153-154.

[6] *Id* at 154.

Version of the Prosecution

On October 19, 1991, at around 8:00 o'clock in the evening, Jimmy, Andrew, Edwin Balani[7] (Balani), and Rolando Mabayo (Mabayo) visited a friend in Sitio Punta, Looc, Salay, Misamis Oriental. Along the way, they saw Taban, together with petitioner and Tubo, come out of the house of one Tomas Osep (Osep). Taban suddenly stabbed Andrew on the chest with a knife. Andrew retaliated by boxing Taban. Jimmy tried to pacify Andrew and Taban but the latter stabbed him in the abdomen. Taban then immediately fled.

Meanwhile, after Jimmy fell down, Tubo threw a drinking glass at Andrew's face while petitioner boxed Andrew's jaw. Tubo stabbed Jimmy who was then lying face down on the ground twice on the back with an ice pick after which he fled. Petitioner then boxed Jimmy's mouth. At this juncture, Balani rushed to Jimmy's aid and boxed petitioner who retaliated by punching Balani. Thereafter, petitioner left the scene. Mabayo was unable to help Jimmy or Andrew because he was shocked by the incident.

After the incident, Jimmy was brought to the clinic of Dr. Precioso Tacandang (Dr. Tacandang). Jimmy was then in critical condition, thus, Dr. Tacandang advised the relatives of Jimmy to bring him to the Northern Mindanao Regional Training Hospital. Upon arrival at the aforesaid hospital, Jimmy was declared dead by the attending physician, Dr. Cedric Dael (Dr. Dael). Jimmy sustained a vital or mortal stab wound at the epigastric area four centimeters below the cyphoid process and another stab wound on the left lumbar. Andrew, who sustained minor injuries, was treated by Dr. Dael.

Version of the Defense

On the night of the stabbing incident, Taban, Tubo and petitioner were drinking liquor in the house of Osep. Taban left the group to urinate on a nearby coconut tree. Outside Osep's

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[7] Also referred to as "Balane" in other parts of the records.

house, he was suddenly boxed by Andrew and kicked by Jimmy causing him to fall near a fishing boat. There Taban found a fishing knife with which he stabbed Jimmy and Andrew in order to defend himself. After which, he fled for fear for his life. Meanwhile, petitioner went out to look for Taban. As he was stepping out of Osep's house, he was boxed by Balani. Petitioner fought back. Andrew tried to help Balani but petitioner was able to evade Andrew's attacks. Instead, petitioner was able to box Andrew. Petitioner then called out to Tubo to come out and run. When Tubo stepped out of the house, neither Taban nor petitioner was present but he saw a person being lifted by several people. Upon seeing this, Tubo, likewise, fled for fear for his life.

Ruling of the Regional Trial Court

On May 16, 1995, the RTC rendered a judgment finding petitioner and Tubo guilty of homicide[8] and all three accused (petitioner, Tubo and Taban) guilty of frustrated homicide, *viz*:

1) In Criminal Case No. 92-079, accused Rosie Quidet and Aurelio Tubo are hereby sentenced, there being no mitigating or aggravating circumstances present, to the penalty of EIGHT (8) YEARS AND ONE (1) DAY OF *PRISION MAYOR* with its medium period as minimum under the Indeterminate Sentence Law to FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY OF *RECLUSION TEMPORAL* in its medium period [as maximum] under the same law.

2) In Criminal Case No. 92-080 for Frustrated Homicide, there being no mitigating or aggravating circumstances present, this court hereby sentences all the accused [Feliciano Taban, Jr., Rosie Quidet and Aurelio Tubo] in this case to an Indeterminate Sentence [Law] of FOUR (4) YEARS OF *PRISION CORRECCIONAL* in its medium period as the minimum under the Indeterminate Sentence Law to TEN (10) YEARS OF *PRISION MAYOR* in its medium period as the maximum under the same law. With costs.

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[8] Taban was no longer included in the sentencing for homicide because, as stated earlier, he was already sentenced by the trial court after he entered a plea of guilty in Criminal Case No. 92-079.

3) To pay jointly and severally the heirs of Jimmy Tagarda in the sum of ₱50,000.00 for Criminal Case No. 92-079;

4) And likewise to pay solidarily the heirs of the victim Andrew Tagarda the sum of ₱10,000.00 for committing the crime of Frustrated Homicide.[9]

The period of preventive imprisonment during which the accused were detained pending the trial of these cases shall be credited in full in favor of all the accused.

SO ORDERED.[10]

The trial court found that the stabbing of Jimmy and Andrew was previously planned by the accused. The active participation of all three accused proved conspiracy in the commission of the crimes. Furthermore, the positive identification of the accused by the prosecution witnesses cannot be offset by the defense of plain denial.

From this judgment, only petitioner appealed to the CA.

Ruling of the Court of Appeals

On July 22, 2005, the CA promulgated the assailed Decision, affirming with modifications, the judgment of the RTC, *viz*:

WHEREFORE, the instant appeal is hereby ***DISMISSED*** for lack of merit. The assailed decision is hereby ***AFFIRMED*** with the following modifications: (a) That in Criminal Case No. 92-080 the crime is only Attempted Homicide; and (b) the civil indemnity in the amount of ten thousand (₱10,000.00) pesos which was awarded to the heirs of Andrew Tagarda be deleted as the same has not been fully substantiated. No costs.

SO ORDERED.[11]

In upholding the conviction of the accused for homicide, the CA held that conspiracy was duly established as shown by the

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[9] Should be payable only to Andrew Tagarda, not to his heirs.

[10] *Rollo*, pp. 51-52.

[11] *Id.* at 17.

concerted acts of the accused in inflicting mortal wounds on Jimmy. Hence, all of the accused are guilty of homicide for the death of Jimmy.

The CA, however, disagreed with the trial court's finding that the accused are liable for frustrated homicide with respect to the injuries sustained by Andrew. According to the CA, the accused failed to inflict mortal wounds on Andrew because the latter successfully deflected the attack. Andrew suffered only minor injuries which could have healed within five to seven days even without medical treatment. The crime committed, therefore, is merely attempted homicide.

The CA also deleted the award of civil indemnity to the heirs of Andrew because the same was not fully substantiated.

Issue

Whether the Decision of the CA finding petitioner to have acted in conspiracy with the other accused (Taban and Tubo) in the commission of the offenses charged is in accordance with law and/or jurisprudence.[12]

Petitioner's Arguments

Petitioner claims that the evidence merely established that: (1) Taban went out of Osep's store while petitioner and Tubo remained inside; (2) a commotion took place between Taban and Andrew; (3) after this altercation, petitioner and Tubo stepped out of Osep's store; and (4) petitioner's participation in the incident is limited to boxing Andrew after the latter had already been stabbed by Taban, and boxing Jimmy's mouth after the latter had been stabbed by Taban and Tubo in succession.

Petitioner insists that it cannot be said that he had the same criminal purpose and design as Taban and Tubo. His participation was not necessary to the completion of the criminal acts because by the time he boxed Andrew and Jimmy, the stabbing had already taken place. The evidence further established that the

[12] *Id.* at 27.

stabbing incident was purely accidental and that the accused had no grudge against the victims. Also, petitioner was unarmed negating his intent to kill.

Petitioner also cites *People v. Vistido*[13] where it was ruled that conspiracy was not established under facts similar to the present case. In *Vistido*, the accused was merely convicted of slight physical injuries.

Respondent's Arguments

Respondent contends that conspiracy was duly established. Petitioner was not merely present during the commission of the crime but he aided Taban and Tubo by inflicting blows on Andrew and Jimmy after the latter were stabbed. The simultaneous movement of the accused towards the victims and their successive escape from the crime scene clearly evince conspiracy. Respondent also stresses that the factual findings of the trial court should be accorded respect for it is in a better position to evaluate testimonial evidence.

Our Ruling

The petition is partly meritorious.

The existence of conspiracy was not proved beyond reasonable doubt. Thus, petitioner is criminally liable only for his individual acts.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[14] The essence of conspiracy is the unity of action and purpose.[15] Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. When there is conspiracy, the act of one is the act of all.

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[13] 169 Phil. 599 (1977).

[14] REVISED PENAL CODE, Article 8.

[15] *People v. Pudpud*, 148-A Phil. 550, 558 (1971).

Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests.[16] However, in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants.[17] What is determinative is proof establishing that the accused were animated by one and the same purpose.[18]

As a general rule, factual findings of the trial court, which is in a better position to evaluate the testimonial evidence, are accorded respect by this Court. But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. In the instant case, we find that the prosecution failed to prove beyond reasonable doubt that petitioner conspired with Taban and Tubo in committing the crimes of homicide and attempted homicide.

Both the trial court and the CA ruled that the evidence duly established conspiracy. In particular, the CA noted:

> [T]his Court HOLDS that there was conspiracy. x x x
>
> With respect to Criminal Case No. 92-080 (for frustrated homicide), it was revealed that after Andrew's chest was stabbed by Taban, Tubo also threw a drinking glass at Andrew's face while [petitioner] boxed Andrew's jaws.
>
> From the foregoing facts, it can be inferred that all the accused acted *in solidum* in trying to inflict injuries to Andrew. Had it been

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[16] *People v. Cadevida*, G.R. No. 94528, March 1, 1993, 219 SCRA 218, 228.

[17] *People v. Vistido, supra* note 12 at 606.

[18] *Id*.

otherwise, Tubo and [petitioner] would have just left the scene of the crime.

With respect to Criminal Case No. 92-079 (for homicide), it was revealed that after Andrew was stabbed by Taban using a double-bladed knife, Taban subsequently stabbed Jimmy before fleeing from the crime scene. Moments later, while Andrew was recovering from fist and glass blows from [petitioner] and Tubo, Tubo [straddled] Jimmy and stabbed him twice with an icepick before [he] left. [Petitioner], on the other hand, delivered a fist blow to Jimmy's mouth notwithstanding the fact that Jimmy was already stabbed by Taban and Tubo.

From the foregoing facts, it can be inferred that all the accused in Criminal Case No. 92-079 confederated and mutually helped each other to insure the killing of Jimmy Tagarda. Hence, conspiracy was present in the cases at bar.[19]

We disagree. To determine if petitioner conspired with Taban and Tubo, the focus of the inquiry should necessarily be the overt acts of petitioner before, during and after the stabbing incident. From this viewpoint, we find several facts of substance which militate against the finding that petitioner conspired with Taban and Tubo.

First, there is no evidence that petitioner, Taban or Tubo had any grudge or enmity against Jimmy or Andrew. The prosecution eyewitnesses (Andrew and Balani) as well as the three accused were one in testifying that there was no misunderstanding between the two groups prior to the stabbing incident. During the testimony of prosecution witness Balani, the trial court itself grappled with the issue of motive:

COURT: (to the witness)

Q- [W]hen you saw Feliciano Taban and Tubo stabbing Jimmy Tagarda, you mean to tell this court that they were enemies?

A- No sir.

x x x x x x x x x

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[19] *Rollo*, pp. 13-14.

Q- Now, was there any information that you received that the reason why the accused Taban and Tubo stabbed Jimmy Tagarda and Andrew Tagarda was x x x of some previous misunderstanding?

A- No, I did not know.

Q- Until now, you cannot tell this court the reason why the stabbing took place except the fact that the group of the accused were having [a] drinking session and your group also had a [prior] drinking session somewhere?

A- Yes, sir.[20]

Second, the stabbing incident appears to have arisen from a purely accidental encounter between Taban's and Andrew's groups with both having had a drinking session. On direct examination, prosecution witness Andrew testified that Taban, Tubo and petitioner successively went out of Osep's house to engage their group. This version of the events made it appear that the three accused laid in wait to carry out the crimes. However, on cross-examination, Andrew contradicted himself when he stated that it was only Taban who their group initially saw with a knife outside Osep's house and who suddenly stabbed Andrew. After he was stabbed, Andrew stated that he retaliated by boxing Taban and it was only then when he (Andrew) saw Tubo and petitioner come out of Osep's house.[21] The records of the preliminary investigation of this case confirm this latter version of the events when Andrew stated that it was only after the commotion between him and Taban that Tubo and petitioner stepped out of Osep's store to help Taban defend himself in the ensuing fight.[22] Significantly, when the defense on cross-examination confronted Andrew with this inconsistency between his statements on direct examination and the preliminary investigation, Andrew answered that at the time of the incident it was only Taban that he saw.[23] The same observation can be

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[20] TSN, February 26, 1993, pp. 80-83.

[21] TSN, October 22, 1992, p. 45.

[22] Records, p. 373.

[23] TSN, October 30, 1992, pp. 43-45.

made on the testimony of the prosecution's second eyewitness, Balani. While on direct examination Balani claimed that the three accused successively came out of Osep's house, on cross-examination, he modified his stance by stating that it was only Taban who initially accosted their group and that petitioner and Tubo were inside Osep's house prior to the commotion.[24] This material inconsistency in the testimonies of the prosecution's eyewitnesses belies the prosecution's theory that the three accused had a pre-conceived plan to kill Jimmy and Andrew.

Third, unlike Taban and Tubo, petitioner was unarmed during the incident, thus, negating his intent to kill the victims. By the prosecution witnesses' account, petitioner's participation was limited to boxing Andrew and Jimmy after Taban and Tubo had stabbed the victims. His acts were neither necessary nor indispensable to the commission of the crimes as they were done after the stabbing. Thus, petitioner's act of boxing the victims can be interpreted as a mere show of sympathy to or camaraderie with his two co-accused.

Taken together, the evidence of the prosecution does not meet the test of moral certainty in order to establish that petitioner conspired with Taban and Tubo to commit the crimes of homicide and attempted homicide. We agree with petitioner that this case is similar to *People v. Vistido*[25] and the ruling there applies with equal force here. In *Vistido*, we held thus —

> There is no question that "a person may be convicted for the criminal act of another where, between them, there has been conspiracy or unity of purpose and intention in the commission of the crime charged." It is, likewise, settled that "to establish conspiracy, it is not necessary to prove previous agreement to commit a crime, if there is proof that the malefactors have acted in consort and in pursuance of the same objective." Nevertheless, "the evidence to prove the same must be positive and convincing. As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full

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[24] TSN, February 26, 1993, p. 45.

[25] *Supra* note 12.

strength the substance of the time-honored principle in criminal law requiring proof beyond reasonable doubt before conviction."

In the case at bar, the evidence for the prosecution does not comply with this basic requirement. To begin with, there is no evidence that appellant and his co-accused had any enmity or grudge against the deceased. On the contrary, the cousin of the deceased, Reynaldo Pagtakhan, testified that prior to the stabbing incident, they did not have any quarrel with them. In the absence of strong motives on their part to kill the deceased, it can not safely be concluded that they conspired to commit the crime involved herein.

Neither could it be assumed that when the appellant and his co-accused were together drinking wine, at the time and place of the incident, they were there purposely to wait for and to kill the deceased. For, they could not have surmised beforehand that between 3:00 and 4:00 o'clock in the morning of November 1, 1969, the deceased and his cousin — after coming home from their work at the cemetery — would go to the Marzan Restaurant, and thereafter, would take a taxi for home, and then, alight at M. Francisco Street. The meeting between the appellant's group and the deceased appears to be purely accidental which negates the existence of conspiracy between the appellant and his co-accused.

Besides, the appellant was unarmed; only his two companions (Pepito Montaño and one John Doe) were armed with daggers. If he (appellant) had really conspired with his co-accused to kill the deceased, he could have provided himself with a weapon. But he did not. Again, this fact belies the prosecution's theory that the appellant had entered into a conspiracy with his co-accused to kill the deceased.

Moreover, although the appellant and his co-accused acted with some degree of simultaneity in attacking the deceased, nevertheless, the same is insufficient to prove conspiracy. The rule is well-settled that "simultaneousness does not of itself demonstrate the concurrence of will nor the unity of action and purpose which are the basis of the responsibility of two or more individuals." To establish common responsibility it is not sufficient that the attack be joint and simultaneous; it is necessary that the assailants be animated by one and the same purpose. In the case at bar, the appellant Raymundo Vistido and the accused Pepito Montaño, did not act pursuant to the same objective. Thus, the purpose of the latter was to kill as shown by the fact that he inflicted a mortal wound below the abdomen of the deceased which caused his death. On the other hand, the act of

the appellant in giving the deceased one fist blow after the latter was stabbed by the accused Pepito Montaño — an act which is certainly unnecessary and not indispensable for the consummation of the criminal assault — does not indicate a purpose to kill the deceased, but merely to "show off" or express his sympathy or feeling of camaraderie with the accused Pepito Montaño. Thus, in *People vs. Portugueza*, this Court held that:

> "Although the appellants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy. (*People vs. Caayao*, 48 Off. Gaz. 637). On the contrary, from the nature and gravity of the wounds inflicted on the deceased, it can be said that the appellant and the other defendant did not act pursuant to the same objective. Florentino Gapole's purpose was to kill the deceased, as shown by the fact that he inflicted a mortal wound which almost severed the left arm. The injury inflicted by the appellant, merely scratching the subcutaneous tissues, does not indicate a purpose to kill the victim. It is not enough that appellant had participated in the assault made by his co-defendant in order to consider him a co-principal in the crime charged. He must have also made the criminal resolution of his co-accused his own. x x x."

and, in *People vs. Vicente*, this Court likewise held:

> "In regard to appellant Ernesto Escorpizo, there seems to be no dispute that he stabbed Soriano several times with a small knife only after the latter had fallen to the ground seriously wounded, if not already dead. There is no showing that this accused had knowledge of the criminal intent of Jose Vicente against the deceased. In all likelihood, Escorpizo's act in stabbing the fallen Soriano with a small knife was not in furtherance of Vicente's aim, which is to kill, but merely to 'show off' or express his sympathy or feeling of camaraderie with Vicente. x x x."

By and large, the evidence for the prosecution failed to show the existence of conspiracy which, according to the settled rule, must be shown to exist as clearly and convincingly as the crime itself. In the absence of conspiracy, the liability of the defendants is separate and individual, each is liable for his own acts, the damage caused thereby, and the consequences thereof. While the evidence shows that the appellant boxed the deceased, it is, however, silent as to the

extent of the injuries, in which case, the appellant should be held liable only for slight physical injuries.[26]

We reach the same conclusion here. For failure of the prosecution to prove conspiracy beyond reasonable doubt, petitioner's liability is separate and individual. Considering that it was duly established that petitioner boxed Jimmy and Andrew and absent proof of the extent of the injuries sustained by the latter from these acts, petitioner should only be made liable for two counts of slight physical injuries. In addition, he should pay ₱5,000.00 as moral damages to the heirs of Jimmy and another ₱5,000.00 as moral damages to Andrew.[27] Actual damages arising from said acts cannot, however, be awarded for failure to prove the same.

Anent the penalty imposed on Taban and Tubo, in Criminal Case No. 92-080, the CA correctly modified the same. The crime committed was attempted homicide and not frustrated homicide because the stab wounds that Andrew sustained were not life-threatening.[28] Although Taban and Tubo did not appeal their conviction, this part of the appellate court's judgment is favorable to them, thus, they are entitled to a reduction of their prison terms.[29] The rule is that an appeal taken by one or more of several accused shall not affect those who did not appeal except insofar as the judgment of the appellate court is favorable and applicable to the latter.[30]

Anent the award of damages for which Taban and Tubo should be made solidarily liable, in Criminal Case No. 92-079, the trial court properly awarded civil indemnity in the amount of ₱50,000.00 to the heirs of Jimmy. Civil indemnity is automatically granted to the heirs of the deceased victim without need of further evidence other than the fact of the commission

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[26] *Id.* at 604-607.

[27] *People v. Loreto,* 446 Phil. 592, 614 (2003).

[28] TSN, November 24, 1992, p. 42; TSN, February 24, 1993, p. 51.

[29] *People v. Pacaña,* 398 Phil. 869, 884 (2000).

[30] RULES OF COURT, RULE 122, SECTION 11(A).

of the crime.[31] In addition, the trial court should have awarded moral damages in the sum of ₱50,000.00 in consonance with current jurisprudence.[32] As to actual damages, the prosecution was able to prove burial-related expenses with supporting receipt[33] only to the extent of ₱5,000.00. In *People v. Villanueva*,[34] we held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages for a lesser amount. We explained that it was anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages amounting to less than ₱25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages.[35] Accordingly, an award of ₱25,000.00 as temperate damages in lieu of actual damages is proper under the premises. As to loss of earning capacity, the same cannot be awarded due to lack of proof other than the self-serving testimony of Jimmy's mother. In Criminal Case No. 92-080, the CA correctly ruled that Andrew is not entitled to an award of actual damages for failure to substantiate the same. However, he is entitled to moral damages in the amount of ₱30,000.00 for the pain, trauma and suffering arising from the stabbing incident.[36] It may be noted that the afore-discussed higher indemnities are not favorable to Taban and Tubo who did not appeal, but in line with our ruling in *People v. Pacaña*,[37] they shall be held solidarily liable therefor since these amounts are not in the form of a penalty.[38]

Finally, the records indicate that the three accused were placed under preventive imprisonment prior to and during the trial of

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[31] *Arcona v. Court of Appeals,* 442 Phil. 7, 15 (2002).

[32] *Id.* at 15-16.

[33] Exhibit "G", records, p. 291.

[34] 456 Phil. 14 (2003).

[35] *Id.* at 29-30.

[36] See *People v. Bermudez,* 368 Phil. 426, 443 (1999).

[37] *Supra* note 28.

[38] *Id.* at 885.

this case. This can be surmised from the motion to grant bail filed by petitioner which was subsequently granted[39] by the trial court. It is not clear, however, for how long and under what conditions they were put in preventive imprisonment. The trial court should, thus, determine the length and conditions of the preventive imprisonment so this may be credited, if proper, in favor of the accused as provided in Article 29[40] of the Revised Penal Code.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The July 22, 2005 Decision of the Court of Appeals in CA-G.R. CR No. 23351 is *AFFIRMED* with the following *MODIFICATIONS*:

1) In Criminal Case No. 92-079, Rosie Quidet is found guilty beyond reasonable doubt of slight physical injuries and is meted the sentence of fifteen (15) days of *arresto menor*. He is ordered to pay the heirs of Jimmy Tagarda ₱5,0000.00

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[39] Records, p. 25.

[40] ARTICLE 29. *Period of Preventive Imprisonment Deducted from Term of Imprisonment*. — Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

1. When they are recidivists, or have been convicted previously twice or more times of any crime;

2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily;

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

as moral damages. Feliciano Taban, Jr. and Aurelio Tubo are ordered to solidarily pay the heirs of Jimmy Tagarda ₱50,0000 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages.

2) In Criminal Case No. 92-080, Feliciano Taban, Jr. and Aurelio Tubo are found guilty beyond reasonable doubt of attempted homicide and are meted the sentence of four (4) months of *arresto mayor* in its medium period as minimum to four (4) years of *prision correccional* in its medium period as maximum. They are ordered to solidarily pay Andrew Tagarda ₱30,000.00 as moral damages. Rosie Quidet is found guilty beyond reasonable doubt of slight physical injuries and is meted the sentence of fifteen (15) days of *arresto menor*. He is ordered to pay Andrew Tagarda ₱5,000.00 as moral damages

3) The period of preventive imprisonment of Feliciano Taban, Jr., Aurelio Tubo and Rosie Quidet shall be credited in their favor in accordance with Article 29 of the Revised Penal Code.

4) The bail bond of Rosie Quidet is cancelled.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Mendoza,*[*] *JJ.,* concur.

[*] In lieu of Justice Roberto A. Abad, per Special Order No. 832 dated March 30, 2010.

FIRST DIVISION

[G.R. No. 186450. April 8, 2010]

NATIONAL WATER RESOURCES BOARD (NWRB), *petitioner, vs.* **A. L. ANG NETWORK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF APPEALS; BATAS PAMBANSA 129; APPELLATE AND *CERTIORARI* JURISDICTION OVER ADJUDICATIONS OF QUASI-JUDICIAL AGENCIES BELONGS TO THE COURT OF APPEALS; EXCEPTION. — Section 9 (1) of BP 129 granted the Court of Appeals (then known as the Intermediate Appellate Court) original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus* and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction. Since the appellate court has *exclusive* appellate jurisdiction over quasi-judicial agencies under Rule 43 of the Rules of Court, petitions for writs of *certiorari*, prohibition or *mandamus* against the acts and omissions of quasi-judicial agencies, like petitioner, should be filed with it. This is what Rule 65 of the Rules imposes for procedural uniformity. The only exception to this instruction is when the law or the Rules itself directs otherwise, as cited in Section 4, Rule 65.

2. ID.; ID.; ID.; ID.; ARTICLE 89 OF P.D. NO. 1067 RENDERED INOPERATIVE BY THE PASSAGE OF BP 129. — The appellate court's construction that Article 89 of PD 1067 is such an exception, is erroneous. **Article 89 of PD 1067 had long been rendered inoperative by the passage of BP 129**. Aside from delineating the jurisdictions of the Court of Appeals and the RTCs, Section 47 of BP 129 repealed or modified: x x x. [t]he provisions of Republic Act No. 296, otherwise known as the Judiciary Act of 1948, as amended, of Republic Act No. 5179, as amended, of the Rules of Court, and of **all other statutes, letters of instructions and general orders or parts thereof, inconsistent with the provisions of this Act** x x x. The general repealing clause under Section 47 "predicates the intended repeal under the condition that a substantial conflict must be found in existing and prior acts."

In enacting BP 129, the *Batasang Pambansa* was presumed to have knowledge of the provision of Article 89 of P.D. No. 1067 and to have intended to change it. The legislative intent to repeal Article 89 is clear and manifest given the scope and purpose of BP 129, one of which is to provide a homogeneous procedure for the review of adjudications of quasi-judicial entities to the Court of Appeals. More importantly, what Article 89 of PD 1067 conferred to the RTC was the power of review on *appeal* the decisions of petitioner. It appears that the appellate court gave significant consideration to the ground of "grave abuse of discretion" to thus hold that the RTC has *certiorari* jurisdiction over petitioner's decisions. A reading of said Article 89 shows, however, that it only made "grave abuse of discretion" as another ground to invoke in an *ordinary* appeal to the RTC. Indeed, the provision was unique to the *Water Code* at the time of its application in 1976.

3. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION MAY BE INVOKED BEFORE THE APPELLATE COURT AS A GROUND FOR AN ERROR OF JURISDICTION. — The issuance of BP 129, specifically Section 9 (Jurisdiction of the Court of Appeals, then known as Intermediate Appellate Court), and the subsequent formulation of the Rules, clarified and delineated the appellate and *certiorari* jurisdictions of the Court of Appeals over adjudications of quasi-judicial bodies. Grave abuse of discretion may be invoked before the appellate court as a ground for an error of jurisdiction. It bears noting that, in the present case, respondent assailed petitioner's order via *certiorari* before the RTC, invoking grave abuse of discretion amounting to lack or excess of jurisdiction as ground-basis thereof. In other words, it invoked such ground not for an error of judgment.

4. ID.; ID.; ID.; ID.; LIST OF QUASI-JUDICIAL AGENCIES SPECIFICALLY MENTIONED IN RULE 43 OF THE RULES OF COURT IS NOT EXCLUSIVE. — While Section 9 (3) of BP 129 and Section 1 of Rule 43 of the Rules of Court does not list petitioner as "among" the quasi-judicial agencies whose final judgments, orders, resolutions or awards are appealable to the appellate court, it is *non sequitur* to hold that the Court of Appeals has no appellate jurisdiction over petitioner's judgments, orders, resolutions or awards. It is

settled that the list of quasi-judicial agencies specifically mentioned in Rule 43 is not meant to be exclusive. The employment of the word "among" clearly instructs so.

5. ID.; ID.; ID.; ID.; RULING IN THE CASES OF BF NORTHWEST HOMEOWNERS ASSOCIATION [G.R. NO. 72370 (1987)]AND TANJAY WATER DISTRICT [G.R. NO. 63742 (1989)], INAPPLICABLE TO CASE AT BAR. — *BF Northwest Homeowners Association v. Intermediate Appellate Court*, a 1987 case cited by the appellate court to support its ruling that RTCs have jurisdiction over judgments, orders, resolutions or awards of petitioner, is no longer controlling in light of the definitive instruction of Rule 43 of the Revised Rules of Court. *Tanjay Water District v. Gabaton* is not in point either as the issue raised therein was which between the RTC and the then National Water Resources Council had jurisdiction over disputes in the appropriation, utilization and control of water.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Mariano L. Natu-el for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

In issue is whether Regional Trial Courts have jurisdiction over appeals from decisions, resolutions or orders of the National Water Resources Board (petitioner).

A.L. Ang Network (respondent) filed on January 23, 2003 an application for a Certificate of Public Convenience (CPC) with petitioner to operate and maintain a water service system in Alijis, Bacolod City.

Bacolod City Water District (BACIWA) opposed respondent's application on the ground that it is the only government agency authorized to operate a water service system within the city.[1]

[1] *Rollo*, pp. 16-17.

By Decision of August 20, 2003, petitioner granted respondent's CPC application. BACIWA moved to have the decision reconsidered, contending that its right to due process was violated when it was not allowed to present evidence in support of its opposition.[2]

Petitioner reconsidered its Decision and allowed BACIWA to present evidence,[3] drawing respondent to file a *petition for certiorari* with the Regional Trial Court (RTC) of Bacolod City against petitioner and BACIWA. Petitioner moved to dismiss the petition, arguing that the proper recourse of respondent was to the Court of Appeals, citing Rule 43 of the Rules of Court.

The RTC, by Order of April 15, 2005,[4] dismissed respondent's petition for lack of jurisdiction, holding that it is the Court of Appeals which has "exclusive appellate jurisdiction over all final judgments, decisions, resolutions, order[s] or awards of . . . quasi-judicial agencies, instrumentalities, boards or commission[s] . . . except those within the appellate jurisdiction of the Supreme Court . . . ." Thus the RTC explained:

> Art. 89 of P.D. 1067 having been long repealed by BP 129, as amended, which has effectively and explicitly removed the Regional Trial Courts' appellate jurisdiction over the decisions, resolutions, order[s] or awards of quasi-judicial agencies such as [petitioner] NWRB, and vested with the Court of Appeals, very clearly now, this Court has no jurisdiction over this instant petition.

Its motion for reconsideration having been denied, respondent filed a petition for *certiorari* at the Court of Appeals, which, by Decision of January 25, 2008,[5] ***annulled*** and ***set aside*** the RTC April 15, 2005, holding that it is the RTC which has jurisdiction over appeals from petitioner's decisions. Thus the appellate court discoursed.

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[2] *Id.* at 18.

[3] *Ibid*.

[4] *Id.* at 70-71.

[5] *Id*. at 60-69. Penned by Associate Justice Priscilla Baltazar-Padilla with Associate Justices Isaias P. Dicdican and Franchito N. Diamante.

In the analogous case of ***BF Northwest Homeowners Association, Inc. vs. Intermediate Appellate Court***[,] the Supreme Court . . . categorically pronounced the RTC's jurisdiction over appeals from the decisions of the NWRB consistent with Article 89 of P.D. No. 1067 and ratiocinated in this wise:

x x x x x x x x x.

> The logical conclusion, therefore, is that jurisdiction over actions for annulment of NWRC decisions lies with the Regional Trial Courts, particularly, when we take note of the fact that the appellate jurisdiction of the Regional Trial Court over NWRC decisions covers such broad and all embracing grounds as grave abuse of discretion, questions of law, and questions of fact and law (Art. 89, P.D. No. 1067). This conclusion is also in keeping with the Judiciary Reorganization Act of 1980, which vests Regional Trial Courts with original jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *etc*. (Sec. 21 [1], B.P. Blg. 129) relating to acts or omissions of an inferior court (Sec. 4, Rule 65, Rules of Court).

x x x x x x x x x.

Similarly, in ***Tanjay Water District vs. Pedro Gabaton***, the Supreme Court conformably ruled, *viz*:

> "Inasmuch as Civil Case No. 8144 involves the appropriation, utilization and control of water, We hold that the jurisdiction to hear and decide the dispute in the first instance, pertains to the Water Resources Council as provided in PD No. 1067 which is the special law on the subject. The Court of First Instance (now Regional Trial Court) has only appellate jurisdiction over the case."

Based on the foregoing jurisprudence, there is no doubt that [petitioner] NWRB is mistaken in its assertion. As no repeal is expressly made, **Article 89 of P.D. No. 1067** is certainly meant to be **an exception to the jurisdiction of the Court of Appeals over appeals or petitions for *certiorari* of the decisions of quasi-judicial bodies**. This finds harmony with Paragraph 2, Section 4, Rule 65 of the Rules of Court wherein it is stated that, "*If it involves the acts of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.*" Evidently, not all petitions for

certiorari under Rule 65 involving the decisions of quasi-judicial agencies must be filed with the Court of Appeals. The rule admits of some exceptions as plainly provided by the phrase "*unless otherwise provided by law or these rules"* and Article 89 of P.D. No. 1067 is verily an example of these exceptions. (italics and emphasis partly in the original; underscoring supplied)

Petitioner's motion for reconsideration having been denied by the appellate court by Resolution of February 9, 2009,[6] petitioner filed the present petition for review, contending that:

THE REGIONAL TRIAL COURT HAS NO *CERTIORARI* JURISDICTION OVER THE [PETITIONER] SINCE SECTION 89, PD NO. 1067, REGARDING APPEALS, HAS BEEN SUPERSEDED AND REPEALED BY [*BATAS PAMBANSA BILANG*] 129 AND THE RULES OF COURT. FURTHERMORE, PD 1067 ITSELF DOES NOT CONTEMPLATE THAT THE REGIONAL TRIAL COURT SHOULD HAVE *CERTIORARI* JURISDICTION OVER THE [PETITIONER].[7] (underscoring supplied)

Petitioner maintains that the RTC does not have jurisdiction over a petition for *certiorari* and prohibition to annul or modify its acts or omissions as a quasi-judicial agency. Citing Section 4 of Rule 65 of the Rules of Court, petitioner contends that there is no law or rule which requires the filing of a petition for *certiorari* over its acts or omissions in any other court or tribunal other than the Court of Appeals.[8]

Petitioner goes on to fault the appellate court in holding that Batas Pambansa Bilang 129 (BP 129) or the *Judiciary Reorganization Act* did not expressly repeal Article 89 of Presidential Decree No. 1067 (PD 1067) otherwise known as the *Water Code of the Philippines*.[9]

Respondent, on the other hand, maintains the correctness of the assailed decision of the appellate court.

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[6] *Id.* at 81-82.

[7] *Id.* at 21.

[8] *Id.* at 26-32.

[9] *Id.* at 38-39.

The petition is impressed with merit.

Section 9 (1) of BP 129 granted the Court of Appeals (then known as the Intermediate Appellate Court) original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus* and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction.[10]

Since the appellate court has *exclusive* appellate jurisdiction over quasi-judicial agencies under Rule 43[11] of the Rules of Court, petitions for writs of *certiorari*, prohibition or *mandamus* against the acts and omissions of quasi-judicial agencies, like

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[10] SEC. 9. *Jurisdiction*.—The [Court of Appeals] shall exercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction.;

(2) Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

x x x x x x x x x.

[11] SECTION 1. *Scope*.—This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals[*] and from awards, judgments, final orders or resolutions of or authorized by <u>any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies</u> are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission,[**] Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform Under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

x x x x x x x x x
(underscoring supplied)

petitioner, should be filed with it. This is what Rule 65 of the Rules imposes for procedural uniformity. The only exception to this instruction is when the law or the Rules itself directs otherwise, as cited in Section 4, Rule 65.[12] The appellate court's construction that Article 89 of PD 1067, which reads:

> ART. 89. The **decisions** of the [NWRB] on water rights controversies may be **appealed** to the [**RTC**] of the province where the subject matter of the controversy is situated within fifteen (15) days from the date the party appealing receives a copy of the decision, on any of the following grounds: (1) **grave abuse of discretion**; (2) question of law; and (3) questions of fact and law (emphasis and underscoring supplied),

is such an exception, is erroneous.

Article 89 of PD 1067 had long been rendered inoperative by the passage of BP 129. Aside from delineating the jurisdictions of the Court of Appeals and the RTCs, Section 47 of BP 129 repealed or modified:

> x x x. [t]he provisions of Republic Act No. 296, otherwise known as the Judiciary Act of 1948, as amended, of Republic Act No. 5179, as amended, of the Rules of Court, and of **all other statutes, letters of instructions and general orders or parts thereof, inconsistent with the provisions of this Act** x x x. (emphasis and underscoring supplied)

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[12] SEC. 4. *When and where to file the petition*. x x x.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. **If it involves the acts of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.**

x x x x x x x x x.
(emphasis and underscoring supplied)

The general repealing clause under Section 47 "predicates the intended repeal under the condition that a substantial conflict must be found in existing and prior acts."[13]

In enacting BP 129, the *Batasang Pambansa* was presumed to have knowledge of the provision of Article 89 of P.D. No. 1067 and to have intended to change it.[14] The legislative intent to repeal Article 89 is clear and manifest given the scope and purpose of BP 129, one of which is to provide a homogeneous procedure for the review of adjudications of quasi-judicial entities to the Court of Appeals.

More importantly, what Article 89 of PD 1067 conferred to the RTC was the power of review on *appeal* the decisions of petitioner. It appears that the appellate court gave significant consideration to the ground of "grave abuse of discretion" to thus hold that the RTC has *certiorari* jurisdiction over petitioner's decisions. A reading of said Article 89 shows, however, that it only made "grave abuse of discretion" as another ground to invoke in an *ordinary* appeal to the RTC. Indeed, the provision was unique to the *Water Code* at the time of its application in 1976.

The issuance of BP 129, specifically Section 9 (Jurisdiction of the Court of Appeals, then known as Intermediate Appellate Court), and the subsequent formulation of the Rules, clarified and delineated the appellate and *certiorari* jurisdictions of the Court of Appeals over adjudications of quasi-judicial bodies. Grave abuse of discretion may be invoked before the appellate court as a ground for an error of jurisdiction.

It bears noting that, in the present case, respondent assailed petitioner's order via *certiorari* before the RTC, invoking grave abuse of discretion amounting to lack or excess of jurisdiction as ground-basis thereof. In other words, it invoked such ground not for an error of judgment.

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[13] *Mecano v. Commission on Audit*, G.R. No. 103982, 216 SCRA 500, 505 (1992).

[14] Vide: *Magno v. Commission on Elections*, G.R. No. 147904, 390 SCRA 495, 500 (2002).

While Section 9 (3) of BP 129[15] and Section 1 of Rule 43 of the Rules of Court[16] does not list petitioner as "among" the quasi-judicial agencies whose final judgments, orders, resolutions or awards are appealable to the appellate court, it is *non sequitur* to hold that the Court of Appeals has no appellate jurisdiction over petitioner's judgments, orders, resolutions or awards. It is settled that the list of quasi-judicial agencies specifically mentioned in Rule 43 is not meant to be exclusive.[17] The employment of the word "among" clearly instructs so.

BF Northwest Homeowners Association v. Intermediate Appellate Court,[18] a 1987 case cited by the appellate court to support its ruling that RTCs have jurisdiction over judgments, orders, resolutions or awards of petitioner, is no longer controlling in light of the definitive instruction of Rule 43 of the Revised Rules of Court.

Tanjay Water District v. Gabaton[19] is not in point either as the issue raised therein was which between the RTC and the then National Water Resources Council had jurisdiction over disputes in the appropriation, utilization and control of water.

IN FINE, *certiorari* and appellate jurisdiction over adjudications of petitioner properly belongs to the Court of Appeals.

WHEREFORE, the challenged Decision and Resolution of the Court of Appeals are *REVERSED and SET ASIDE*. The April 15, 2005 Order of the Regional Trial Court of Bacolod City dismissing petitioner's petition for lack of jurisdiction is *UPHELD*.

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[15] *Supra* note 10.

[16] *Supra* note 11.

[17] *Vide*: *United Coconut Planters Bank v. E. Ganzon, Inc*, G.R. Nos. 168859 and 168897, June 30, 2009, 591 SCRA 321, 337; *Land Bank of the Philippines v. De Leon*, 437 Phil. 347, 357 (2002); *Sy v. COSLAP*, 417 Phil. 378, 393-394 (2001); and *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 203 (2001).

[18] G.R. No. 72370, 234 Phil. 537 (1987).

[19] G.R. No. 63742, 254 Phil. 253 (1989).

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 190582. April 8, 2010]

ANG LADLAD LGBT PARTY represented herein by its Chair, DANTON REMOTO, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; PARTY-LIST SYSTEM; SECTORAL PARTY ACCREDITATION; THE CRUCIAL ELEMENT IS NOT WHETHER A SECTOR IS SPECIFICALLY ENUMERATED, BUT WHETHER A PARTICULAR ORGANIZATION COMPLIES WITH THE REQUIREMENTS OF THE CONSTITUTION AND REPUBLIC ACT 7941.— The COMELEC denied *Ang Ladlad's* application for registration on the ground that the LGBT sector is neither enumerated in the Constitution and RA 7941, nor is it associated with or related to any of the sectors in the enumeration. Respondent mistakenly opines that our ruling in *Ang Bagong Bayani* stands for the proposition that only those sectors specifically enumerated in the law or related to said sectors (labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals) may be registered under the party-list system. As we explicitly ruled in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, "the enumeration of marginalized and under-represented sectors is not exclusive." The crucial element is not whether a sector is specifically enumerated, but whether

a particular organization complies with the requirements of the Constitution and RA 7941.

2. ID.; ID.; ID.; ID.; THE COMELEC'S BELATED CLAIM OF THE NON-EXISTENCE OF THE PETITIONER PARTY AS A GROUND FOR DENIAL OF ITS ACCREDITATION IS A SERIOUS VIOLATION OF ITS RIGHT TO PROCEDURAL DUE PROCESS.— Respondent also argues that *Ang Ladlad* made untruthful statements in its petition when it alleged that it had nationwide existence through its members and affiliate organizations. The COMELEC claims that upon verification by its field personnel, it was shown that "save for a few isolated places in the country, petitioner does not exist in almost all provinces in the country." This argument that "petitioner made untruthful statements in its petition when it alleged its national existence" is a new one; previously, the COMELEC claimed that petitioner was "not being truthful when it said that it or any of its nominees/party-list representatives have not violated or failed to comply with laws, rules, or regulations relating to the elections." Nowhere was this ground for denial of petitioner's accreditation mentioned or even alluded to in the Assailed Resolutions. This, in itself, is quite curious, considering that the reports of petitioner's alleged non-existence were already available to the COMELEC prior to the issuance of the First Assailed Resolution. At best, this is irregular procedure; at worst, a belated afterthought, a change in respondent's theory, and a serious violation of petitioner's right to procedural due process.

3. ID.; ID.; ID.; ID.; LEGAL REQUIREMENTS FOR ITS ACCREDITATION SUFFICIENTLY COMPLIED WITH BY THE PETITIONER PARTY.— [W]e find that there has been no misrepresentation. A cursory perusal of *Ang Ladlad's* initial petition shows that it never claimed to exist in each province of the Philippines. Rather, petitioner alleged that the LGBT community in the Philippines was estimated to constitute at least 670,000 persons; that it had 16,100 affiliates and members around the country, and 4,044 members in its electronic discussion group. *Ang Ladlad* also represented itself to be "a national LGBT umbrella organization with affiliates around the Philippines composed of the several LGBT networks xxx. Since the COMELEC only searched for the names *ANG LADLAD* LGBT or *LADLAD* LGBT, it is no surprise that they found that

petitioner had no presence in any of these regions. In fact, if COMELEC's findings are to be believed, petitioner does not even exist in Quezon City, which is registered as *Ang Ladlad's* principal place of business. Against this backdrop, we find that *Ang Ladlad* has sufficiently demonstrated its compliance with the legal requirements for accreditation. Indeed, aside from COMELEC's moral objection and the belated allegation of non-existence, nowhere in the records has the respondent ever found/ruled that *Ang Ladlad* is not qualified to register as a party-list organization under any of the requisites under RA 7941 or the guidelines in *Ang Bagong Bayani*. The difference, COMELEC claims, lies in *Ang Ladlad's* morality, or lack thereof.

4. ID.; ID.; ID.; ID.; EXCLUSION OF THE PETITIONER PARTY BASED ON RELIGIOUS JUSTIFICATION IS A GRAVE VIOLATION OF THE NON-ESTABLISHMENT CLAUSE.— Our Constitution provides in Article III, Section 5 that "[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." At bottom, what our non-establishment clause calls for is "government neutrality in religious matters." Clearly, "governmental reliance on religious justification is inconsistent with this policy of neutrality." We thus find that it was grave violation of the non-establishment clause for the COMELEC to utilize the Bible and the Koran to justify the exclusion of *Ang Ladlad*.

5. ID.; ID.; ID.; ID.; GOVERNMENT MUST ACT FOR SECULAR PURPOSES AND IN WAYS THAT HAVE PRIMARILY SECULAR EFFECTS.— Rather than relying on religious belief, the legitimacy of the Assailed Resolutions should depend, instead, on whether the COMELEC is able to advance some justification for its rulings beyond mere conformity to religious doctrine. Otherwise stated, government must act for secular purposes and in ways that have primarily secular effects. As we held in *Estrada v. Escritor*: x x x The morality referred to in the law is public and necessarily secular, not religious as the dissent of Mr. Justice Carpio holds. "Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms." Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to

what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a "compelled religion," anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens. xxx.

6. ID.; ID.; ID.; ID.; THE GENERALLY ACCEPTED PUBLIC MORALS HAVE NOT BEEN CONVINCINGLY TRANSPLANTED INTO THE REALM OF LAW; BARE INVOCATION OF MORALITY IS INSUFFICIENT TO JUSTIFY EXCLUSION OF THE PETITIONER PARTY FROM THE PARTY-LIST SYSTEM.— We are not blind to the fact that, through the years, homosexual conduct, and perhaps homosexuals themselves, have borne the brunt of societal disapproval. It is not difficult to imagine the reasons behind this censure – religious beliefs, convictions about the preservation of marriage, family, and procreation, even dislike or distrust of homosexuals themselves and their perceived lifestyle. Nonetheless, we recall that the Philippines has not seen fit to criminalize homosexual conduct. Evidently, therefore, these "generally accepted public morals" have not been convincingly transplanted into the realm of law. The Assailed Resolutions have not identified any specific overt immoral act performed by *Ang Ladlad*. Even the OSG agrees that "there should have been a finding by the COMELEC that the group's members have committed or are committing immoral acts." xxx. Respondent has failed to explain what societal ills are sought to be prevented, or why special protection is required for the youth. Neither has the COMELEC condescended to justify its position that petitioner's admission into the party-list system would be so harmful as to irreparably damage the moral fabric of society. We, of course, do not suggest that the state is wholly without authority to regulate matters concerning morality, sexuality, and sexual relations, and we recognize that the government will and should continue to restrict behavior considered detrimental to society. Nonetheless, we cannot countenance advocates who, undoubtedly with the loftiest

of intentions, situate morality on one end of an argument or another, without bothering to go through the rigors of legal reasoning and explanation. In this, the notion of morality is robbed of all value. Clearly then, the bare invocation of morality will not remove an issue from our scrutiny.

7. ID.; ID.; ID.; ID.; MORAL DISAPPROVAL, WITHOUT MORE, IS NOT A SUFFICIENT GOVERNMENTAL INTEREST TO JUSTIFY EXCLUSION OF HOMOSEXUALS FROM PARTICIPATION IN THE PARTY-LIST SYSTEM.— We also find the COMELEC's reference to purported violations of our penal and civil laws flimsy, at best; disingenuous, at worst. Article 694 of the Civil Code defines a nuisance as "any act, omission, establishment, condition of property, or anything else which shocks, defies, or disregards decency or morality," the remedies for which are a prosecution under the Revised Penal Code or any local ordinance, a civil action, or abatement without judicial proceedings. A violation of Article 201 of the Revised Penal Code, on the other hand, requires proof beyond reasonable doubt to support a criminal conviction. It hardly needs to be emphasized that mere allegation of violation of laws is not proof, and a mere blanket invocation of public morals cannot replace the institution of civil or criminal proceedings and a judicial determination of liability or culpability. As such, we hold that moral disapproval, without more, is not a sufficient governmental interest to justify exclusion of homosexuals from participation in the party-list system. The denial of *Ang Ladlad's* registration on purely moral grounds amounts more to a statement of dislike and disapproval of homosexuals, rather than a tool to further any substantial public interest. Respondent's blanket justifications give rise to the inevitable conclusion that the COMELEC targets homosexuals themselves as a class, not because of any particular morally reprehensible act. It is this selective targeting that implicates our equal protection clause.

8. ID.; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; NOT AN ABSOLUTE PROHIBITION ON CLASSIFICATION; CLASSIFICATION, WHEN ALLOWED.— Despite the absolutism of Article III, Section 1 of our Constitution, which provides "*nor shall any person be denied equal protection of the laws*," courts have never interpreted the provision as an absolute prohibition on

classification. "Equality," said Aristotle, "consists in the same treatment of similar persons." The equal protection clause guarantees that no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances. Recent jurisprudence has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the classification as long as it bears a rational relationship to some legitimate government end. In *Central Bank Employees Association, Inc. v. Banko Sentral ng Pilipinas,* we declared that "[i]n our jurisdiction, the standard of analysis of equal protection challenges x x x have followed the 'rational basis' test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution."

9. ID.; ID.; ID.; THE COMELEC'S DIFFERENTIATION AND UNSUBSTANTIATED CLAIM AGAINST THE PETITIONER PARTY FURTHERS NO LEGITIMATE INTEREST OTHER THAN DISAPPROVAL OF OR DISLIKE FOR A DISFAVORED GROUP.— The COMELEC posits that the majority of the Philippine population considers homosexual conduct as immoral and unacceptable, and this constitutes sufficient reason to disqualify the petitioner. Unfortunately for the respondent, the Philippine electorate has expressed no such belief. No law exists to criminalize homosexual behavior or expressions or parties about homosexual behavior. Indeed, even if we were to assume that public opinion is as the COMELEC describes it, the asserted state interest here – that is, moral disapproval of an unpopular minority – is not a legitimate state interest that is sufficient to satisfy rational basis review under the equal protection clause. The COMELEC's differentiation, and its unsubstantiated claim that *Ang Ladlad* cannot contribute to the formulation of legislation that would benefit the nation, furthers no legitimate state interest other than disapproval of or dislike for a disfavored group. From the standpoint of the political process, the lesbian, gay, bisexual, and transgender have the same interest in participating in the party-list system on the same basis as other political parties similarly situated. State intrusion in this case is equally burdensome. Hence, laws of general application should apply

with equal force to LGBTs, and they deserve to participate in the party-list system on the same basis as other marginalized and under-represented sectors.

10. ID.; ID.; FREEDOM OF EXPRESSION AND ASSOCIATION; PROTECTS EXPRESSIONS CONCERNING ONE'S HOMOSEXUALITY AND THE ACTIVITY OF FORMING A POLITICAL ASSOCIATION THAT SUPPORTS LGBT INDIVIDUALS.— Under our system of laws, every group has the right to promote its agenda and attempt to persuade society of the validity of its position through normal democratic means. It is in the public square that deeply held convictions and differing opinions should be distilled and deliberated upon. xxx Freedom of expression constitutes one of the essential foundations of a democratic society, and this freedom applies not only to those that are favorably received but also to those that offend, shock, or disturb. Any restriction imposed in this sphere must be proportionate to the legitimate aim pursued. Absent any compelling state interest, it is not for the COMELEC or this Court to impose its views on the populace. Otherwise stated, the COMELEC is certainly not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one. This position gains even more force if one considers that homosexual conduct is not illegal in this country. It follows that both expressions concerning one's homosexuality and the activity of forming a political association that supports LGBT individuals are protected as well.

11. ID.; ID.; ID.; REFUSAL TO ACCREDIT PETITIONER PARTY AS A PARTY-LIST ORGANIZATION IS A RESTRICTION ON THEIR FREEDOM OF EXPRESSION OR ASSOCIATION.— The OSG argues that since there has been neither prior restraint nor subsequent punishment imposed on *Ang Ladlad*, and its members have not been deprived of their right to voluntarily associate, then there has been no restriction on their freedom of expression or association. xxx The OSG fails to recall that petitioner has, in fact, established its qualifications to participate in the party-list system, and – as advanced by the OSG itself – the moral objection offered by the COMELEC was not a limitation imposed by law. To the extent, therefore, that the petitioner has been precluded, because of COMELEC's action, from publicly expressing its

views as a political party and participating on an equal basis in the political process with other equally-qualified party-list candidates, we find that there has, indeed, been a transgression of petitioner's fundamental rights.

12. ID.; INTERNATIONAL LAW; PRINCIPLE OF NON-DISCRIMINATION RECOGNIZED IN OUR JURISDICTION.— In an age that has seen international law evolve geometrically in scope and promise, international human rights law, in particular, has grown dynamically in its attempt to bring about a more just and humane world order. For individuals and groups struggling with inadequate structural and governmental support, international human rights norms are particularly significant, and should be effectively enforced in domestic legal systems so that such norms may become actual, rather than ideal, standards of conduct. Our Decision today is fully in accord with our international obligations to protect and promote human rights. In particular, we explicitly recognize the principle of non-discrimination as it relates to the right to electoral participation, enunciated in the UDHR and the ICCPR. The principle of non-discrimination is laid out in Article 26 of the ICCPR xxx. [T]he principle of non-discrimination requires that laws of general application relating to elections be applied equally to all persons, regardless of sexual orientation. Although sexual orientation is not specifically enumerated as a status or ratio for discrimination in Article 26 of the ICCPR, the ICCPR Human Rights Committee has opined that the reference to "sex" in Article 26 should be construed to include "sexual orientation." Additionally, a variety of United Nations bodies have declared discrimination on the basis of sexual orientation to be prohibited under various international agreements.

13. ID.; ID.; YOGYAKARTA PRINCIPLES DO NOT CONSTITUTE BINDING OBLIGATIONS IN OUR JURISDICTION.— We stress, that although this Court stands willing to assume the responsibility of giving effect to the Philippines' international law obligations, the blanket invocation of international law is not the panacea for all social ills. We refer now to the petitioner's invocation of the *Yogyakarta Principles* (the Application of International Human Rights Law In Relation to Sexual Orientation and Gender Identity), which petitioner declares to reflect binding principles of international

law. At this time, we are not prepared to declare that these *Yogyakarta Principles* contain norms that are obligatory on the Philippines. There are declarations and obligations outlined in said Principles which are not reflective of the current state of international law, and do not find basis in any of the sources of international law enumerated under Article 38(1) of the Statute of the International Court of Justice. Petitioner has not undertaken any objective and rigorous analysis of these alleged principles of international law to ascertain their true status. We also hasten to add that not everything that society — or a certain segment of society — wants or demands is automatically a human right. This is not an arbitrary human intervention that may be added to or subtracted from at will. It is unfortunate that much of what passes for human rights today is a much broader context of needs that identifies many social desires as rights in order to further claims that international law obliges states to sanction these innovations. This has the effect of diluting real human rights, and is a result of the notion that if "wants" are couched in "rights" language, then they are no longer controversial. Using even the most liberal of lenses, these *Yogyakarta Principles*, consisting of a declaration formulated by various international law professors, are — at best — *de lege ferenda* — and do not constitute binding obligations on the Philippines. Indeed, so much of contemporary international law is characterized by the "soft law" nomenclature, *i.e.*, international law is full of principles that promote international cooperation, harmony, and respect for human rights, most of which amount to no more than well-meaning desires, without the support of either State practice or *opinio juris*.

PUNO, *C.J.*, *separate concurring opinion:*

1. POLITICAL LAW; ELECTIONS; PARTY-LIST SYSTEM; SECTORAL PARTY ACCREDITATION; DENIAL OF THE PETITION FOR REGISTRATION OF THE PETITIONER PARTY ON RELIGIOUS GROUND IS A VIOLATION OF THE NON-ESTABLISHMENT CLAUSE.— The assailed Resolutions of the Commission on Elections (COMELEC) run afoul of the non-establishment clause of the Constitution. There was cypher effort on the part of the COMELEC to couch its reasoning in legal — much less constitutional — terms, as it

denied Ang Ladlad's petition for registration as a sectoral party principally on the ground that it "tolerates immorality which offends religious (*i.e.*, Christian and Muslim) beliefs." To be sure, the COMELEC's ruling is completely antithetical to the fundamental rule that "[t]he public morality expressed in the law is **necessarily secular**[,] for in our constitutional order, the religion clauses prohibit the state from establishing a religion, **including the morality it sanctions**." xxx. "Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms." *Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, i.e., to a "compelled religion;" anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens.* Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality. Consequently, the assailed resolutions of the COMELEC are violative of the constitutional directive that **no religious test shall be required for the exercise of civil or political rights**. Ang Ladlad's right of political participation was unduly infringed when the COMELEC, swayed by the private biases and personal prejudices of its constituent members, arrogated unto itself the role of a religious court or worse, a morality police.

2. ID.; ID.; ID.; ID.; PRIVATE DISCRIMINATION, HOWEVER, UNFOUNDED, CANNOT BE ATTRIBUTED OR ASCRIBED TO THE STATE.— The COMELEC attempts to disengage itself from this "excessive entanglement" with religion by arguing that we "cannot ignore our strict religious upbringing, whether Christian or Muslim" since the "moral precepts espoused by [these] religions have slipped into society and … are now publicly

accepted moral norms." However, as correctly observed by Mr. Justice del Castillo, the Philippines has not seen fit to disparage homosexual conduct as to actually criminalize it. Indeed, even if the State has legislated to this effect, the law is vulnerable to constitutional attack on privacy grounds. These alleged "generally accepted public morals" have not, in reality, crossed over from the religious to the secular sphere. Some people may find homosexuality and bisexuality deviant, odious, and offensive. Nevertheless, private discrimination, however unfounded, cannot be attributed or ascribed to the State.

3. ID.; ID.; ID.; ID.; PERSONAL IDENTITY *VIS-A-VIS* PERSONAL LIBERTY.— The COMELEC capitalized on Ang Ladlad's definition of the term "sexual orientation," as well as its citation of the number of Filipino men who have sex with men, as basis for the declaration that the party espouses and advocates sexual immorality. **This position, however, would deny homosexual and bisexual individuals a fundamental element of personal identity and a legitimate exercise of personal liberty**. For, the "ability to [independently] define one's identity that is central to any concept of liberty" cannot truly be exercised in a vacuum; we all depend on the "emotional enrichment from close ties with others." xxx. It has been said that freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the due process clause. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

4. ID.; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; LEGISLATIVE CLASSIFICATION; LEVELS OF JUDICIAL SCRUTINY, ELABORATED.— The *ponencia* of Mr. Justice del Castillo refused to characterize homosexuals and bisexuals as a class in themselves for purposes of the equal protection clause. Accordingly, it struck down the assailed Resolutions using the most liberal basis of judicial scrutiny, the rational basis test, according to which government need

only show that the challenged classification is rationally related to serving a legitimate state interest. I humbly submit, however, that a classification based on gender or sexual orientation is a **quasi-suspect classification**, as to trigger a **heightened level of review**. Preliminarily, in our jurisdiction, the standard and analysis of equal protection challenges in the main have followed the rational basis test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution. However, *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, carved out an exception to this general rule, such that prejudice to persons accorded special protection by the Constitution requires stricter judicial scrutiny than mere rationality xxx. Corollarily, American case law provides that a state action questioned on equal protection grounds is subject to one of three levels of judicial scrutiny. The level of review, on a sliding scale basis, varies with the type of classification utilized and the nature of the right affected. If a legislative classification disadvantages a "suspect class" or impinges upon the exercise of a "fundamental right," then the courts will employ strict scrutiny and the statute must fall unless the government can demonstrate that the classification has been precisely tailored to serve a compelling governmental interest. Over the years, the United States Supreme Court has determined that suspect classes for equal protection purposes include classifications based on race, religion, alienage, national origin, and ancestry. The underlying rationale of this theory is that where legislation affects discrete and insular minorities, the presumption of constitutionality fades because traditional political processes may have broken down. In such a case, the State bears a heavy burden of justification, and the government action will be closely scrutinized in light of its asserted purpose. On the other hand, if the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, or if a classification disadvantages a "quasi-suspect class," it will be treated under intermediate or heightened review. To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations. Noteworthy, and of special interest to us in this case, **quasi-**

suspect classes include classifications based on gender or illegitimacy. If neither strict nor intermediate scrutiny is appropriate, then the statute will be tested for mere rationality. This is a relatively relaxed standard reflecting the Court's awareness that the drawing of lines which creates distinctions is peculiarly a legislative task and an unavoidable one. The presumption is in favor of the classification, of the reasonableness and fairness of state action, and of legitimate grounds of distinction, if any such grounds exist, on which the State acted.

5. ID.; ID.; ID.; ID.; ID.; FOUR FACTORS; CLASSIFICATION BASED ON GENDER OR SEXUAL ORIENTATION IS A QUASI-SUSPECT CLASSIFICATION THAT PROMPTS A HEIGHTENED LEVEL OF REVIEW.— Instead of adopting a rigid formula to determine whether certain legislative classifications warrant more demanding constitutional analysis, the United States Supreme Court has looked to four factors, thus: (1) The history of invidious discrimination against the class burdened by the legislation; (2) Whether the characteristics that distinguish the class indicate a typical class member's ability to contribute to society; (3) Whether the distinguishing characteristic is "immutable" or beyond the class members' control; and (4) The political power of the subject class. These factors, it must be emphasized, are ***not*** **constitutive essential elements** of a suspect or quasi-suspect class, as to individually demand a certain weight. The U.S. Supreme Court has applied the four factors in a flexible manner; it has neither required, nor even discussed, every factor in every case. Indeed, no single talisman can define those groups likely to be the target of classifications offensive to the equal protection clause and therefore warranting heightened or strict scrutiny; experience, not abstract logic, must be the primary guide. In any event, the first two factors — history of intentional discrimination and relationship of classifying characteristic to a person's ability to contribute — have always been present when heightened scrutiny has been applied. They have been critical to the analysis and could be considered as prerequisites to concluding a group is a suspect or quasi-suspect class. However, the last two factors — immutability of the characteristic and political powerlessness of the group – are considered simply to supplement the analysis as a means to discern whether a need for heightened scrutiny

exists. Guided by this framework, and considering further that classifications based on sex or gender – albeit on a male/female, man/woman basis – have been previously held to trigger heightened scrutiny, I respectfully submit that classification on the basis of sexual orientation (*i.e.*, homosexuality and/or bisexuality) is a quasi-suspect classification that prompts intermediate review.

6. ID.; ID.; ID.; ID.; ID.; ID.; ANY LEGISLATIVE BURDEN PLACED ON LESBIAN AND GAY PEOPLE AS A CLASS IS MORE LIKELY THAN OTHERS TO REFLECT DEEP-SEATED PREJUDICE RATHER THAN LEGISLATIVE RATIONALITY IN PURSUIT OF SOME LEGITIMATE OBJECTIVE.— The first consideration is whether homosexuals have suffered a history of purposeful unequal treatment because of their sexual orientation. One cannot, in good faith, dispute that gay and lesbian persons historically have been, and continue to be, the target of purposeful and pernicious discrimination due solely to their sexual orientation. xxx [T]his history of discrimination suggests that any legislative burden placed on lesbian and gay people as a class is "more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective."

7. ID.; ID.; ID.; ID.; ID.; ID.; HOMOSEXUAL ORIENTATION IS NO MORE RELEVANT TO A PERSON'S ABILITY TO PERFORM AND CONTRIBUTE TO SOCIETY THAN IS HETEROSEXUAL ORIENTATION.— A second relevant consideration is whether the character-in-issue is related to the person's ability to contribute to society. Heightened scrutiny is applied when the classification bears no relationship to this ability; the existence of this factor indicates the classification is likely based on irrelevant stereotypes and prejudice. Insofar as sexual orientation is concerned, it is gainful to repair to *Kerrigan v. Commissioner of Public Health*, *viz.*: xxx. Unlike the characteristics unique to those groups, however, "homosexuality bears no relation at all to [an] individual's ability to contribute fully to society." *Indeed, because an individual's homosexual orientation "implies no impairment in judgment, stability, reliability or general social or vocational capabilities"; the observation of the United States Supreme Court that race, alienage and national origin -all suspect classes entitled to the highest level of constitutional*

protection- "are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy" is no less applicable to gay persons. Clearly, homosexual orientation is no more relevant to a person's ability to perform and contribute to society than is heterosexual orientation.

8. ID.; ID.; ID.; ID.; ID.; ID.; IMMUTABILITY FACTOR, EXPLAINED; SEXUAL ORIENTATION IS NOT THE TYPE OF HUMAN TRAIT THAT ALLOWS COURTS TO RELAX THEIR STANDARD OF REVIEW BECAUSE THE BARRIER IS TEMPORARY OR SUSCEPTIBLE TO SELF-HELP.— A third factor that courts have considered in determining whether the members of a class are entitled to heightened protection for equal protection purposes is whether the attribute or characteristic that distinguishes them is immutable or otherwise beyond their control. Of course, the characteristic that distinguishes gay persons from others and qualifies them for recognition as a distinct and discrete group is the characteristic that historically has resulted in their social and legal ostracism, namely, their attraction to persons of the same sex. Immutability is a factor in determining the appropriate level of scrutiny because the inability of a person to change a characteristic that is used to justify different treatment makes the discrimination violative of the rather "'basic concept of our system that legal burdens should bear some relationship to individual responsibility.'" However, the constitutional relevance of the immutability factor is not reserved to those instances in which the trait defining the burdened class is absolutely impossible to change. That is, the immutability prong of the suspectness inquiry surely is satisfied when the identifying trait is "so central to a person's identity that it would be abhorrent for government to penalize a person for refusing to change [it]." Prescinding from these premises, it is not appropriate to require a person to repudiate or change his or her sexual orientation in order to avoid discriminatory treatment, because a person's sexual orientation is so integral an aspect of one's identity. Consequently, because sexual orientation "may be altered [if at all] only at the expense of significant damage to the individual's sense of self," classifications based thereon "are no less entitled to consideration as a suspect or

quasi-suspect class than any other group that has been deemed to exhibit an immutable characteristic." Stated differently, sexual orientation is not the type of human trait that allows courts to relax their standard of review because the barrier is temporary or susceptible to self-help.

9. ID.; ID.; ID.; ID.; ID.; ID.; POLITICAL POWERLESSNESS FACTOR, EXPLAINED; ANY STATE ACTION SINGLING LESBIANS, GAYS, BISEXUALS AND TRANS-GENDERS OUT FOR DISPARATE TREATMENT IS SUBJECT TO HEIGHTENED JUDICIAL SCRUTINY TO ENSURE THAT IT IS NOT THE PRODUCT OF HISTORICAL PREJUDICE AND STEREOTYPING.— The final factor that bears consideration is whether the group is "a minority or politically powerless." However, the political powerlessness factor of the level-of-scrutiny inquiry does not require a showing of absolute political powerlessness. Rather, the touchstone of the analysis should be "whether the group lacks sufficient political strength to bring a prompt end to the prejudice and discrimination through traditional political means." Applying this standard, it would not be difficult to conclude that gay persons are entitled to heightened constitutional protection despite some recent political progress. The discrimination that they have suffered has been so pervasive and severe – even though their sexual orientation has no bearing at all on their ability to contribute to or perform in society – that it is highly unlikely that legislative enactments alone will suffice to eliminate that discrimination. Furthermore, insofar as the LGBT community plays a role in the political process, it is apparent that their numbers reflect their status as a small and insular minority. It is respectfully submitted that any state action singling lesbians, gays, bisexuals and trans-genders out for disparate treatment is subject to heightened judicial scrutiny to ensure that it is not the product of historical prejudice and stereotyping.

10. ID.; ID.; ID.; ID.; ID.; ID.; STATUS-BASED CLASSIFICATION UNDERTAKEN FOR ITS OWN SAKE CANNOT SURVIVE.— In this case, the assailed Resolutions of the COMELEC unmistakably fail the intermediate level of review. Regrettably, they betray no more than bigotry and intolerance; they raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected (that

is, lesbian, gay, bisexual and trans-gendered individuals). In our constitutional system, status-based classification **undertaken for its own sake** cannot survive.

11. ID.; ELECTIONS; PARTY-LIST SYSTEM; SECTORAL PARTY ACCREDITATION; THE ENUMERATION OF MARGINALIZED AND UNDERREPRESENTED SECTORS IN RA 7941 IS NOT EXCLUSIVE.— It has been suggested that the LGBT community cannot participate in the party-list system because it is not a "marginalized and underrepresented sector" enumerated either in the Constitution or Republic Act No. (RA) 7941. However, this position is belied by our ruling in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, where we clearly held that the enumeration of marginalized and underrepresented sectors in RA 7941 is **not exclusive**.

12. ID.; ID.; ID.; ID.; MARGINALIZATION FOR PURPOSES OF PARTY-LIST REPRESENTATION ALSO ENCOMPASSES SOCIAL MARGINALIZATION.— I likewise see no logical or factual obstacle to classifying the members of the LGBT community as marginalized and underrepresented, considering their long history (and indeed, ongoing narrative) of persecution, discrimination, and pathos. **In my humble view, marginalization for purposes of party-list representation encompasses social marginalization as well.** To hold otherwise is tantamount to trivializing socially marginalized groups as "mere passive recipients of the State's benevolence" and denying them the right to "participate directly [in the mainstream of representative democracy] in the enactment of laws designed to benefit them." The party-list system could not have been conceptualized to perpetuate this injustice.

ABAD*, J., separate opinion:*

1. POLITICAL LAW; ELECTIONS; PARTY-LIST SYSTEM; SECTORAL PARTY ACCREDITATION; TERM "MARGINALIZED AND UNDERREPRESENTED," EXPLAINED.— [C]ongress did not provide a definition of the term "marginalized and underrepresented." Nor did the Court dare provide one in its decision in *Ang Bagong Bayani*. It is possible, however, to get a sense of what Congress intended in adopting such term. No doubt, Congress crafted that term—

marginalized and underrepresented—from its reading of the concrete examples that the Constitution itself gives of groupings that are entitled to accreditation. These examples are the labor, the peasant, the urban poor, the indigenous cultural minorities, the women, and the youth sectors. Fortunately, quite often ideas are best described by examples of what they are, which was what those who drafted the 1987 Constitution did, rather than by an abstract description of them. For Congress it was much like looking at a gathering of "a dog, a cat, a horse, an elephant, and a tiger" and concluding that it is a gathering of "animals." Here, it looked at the samples of qualified groups (labor, peasant, urban poor, indigenous cultural minorities, women, and youth) and found a common thread that passes through them all. Congress concluded that these groups belonged to the "marginalized and underrepresented." So what is the meaning of the term "marginalized and underrepresented?" The examples given (labor, peasant, urban poor, indigenous cultural minorities, women, and youth) should be the starting point in any search for definition. Congress has added six others to this list: the fisherfolk, the elderly, the handicapped, the veterans, the overseas workers, and the professionals. Thus, the pertinent portion of Section 5 of R.A. 7941 provides: **Sec. 5. Registration. — x x x Provided, that the sector shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.** If one were to analyze these Constitutional and statutory examples of qualified parties, it should be evident that they represent the **working class** (labor, peasant, fisherfolk, overseas workers), the **service class** (professionals), the **economically deprived** (urban poor), the **social outcasts** (indigenous cultural minorities), the **vulnerable** (women, youth) and the **work impaired** (elderly, handicapped, veterans). This analysis provides some understanding of who, in the eyes of Congress, are marginalized and underrepresented.

2. ID.; ID.; ID.; ID.; THE APPLYING PARTY SHOULD BE CHARACTERIZED BY A SHARED ADVOCACY FOR GENUINE ISSUES AFFECTING BASIC HUMAN RIGHTS AS THESE APPLY TO THE SECTOR IT REPRESENTS.— The parties of the marginalized and underrepresented should be more than just lobby or interest groups. They must have an authentic identity that goes beyond mere similarities in

background or circumstances. It is not enough that their members belong to the same industry, speak the same dialect, have a common hobby or sport, or wish to promote public support for their mutual interests. The group should be characterized by a shared advocacy for genuine issues affecting basic human rights as these apply to their groups. This is in keeping with the statutory objective of sharing with them seats in the House of Representatives so they can take part in enacting beneficial legislation. It should be borne in mind, however, that both the Constitution and R.A. 7941 merely provide by examples a sense of what the qualified organizations should look like. As the Court acknowledged in *Ang Bagong Bayani*, these examples are not exclusive. For instance, there are groups which are pushed to the margin because they advocate an extremist political ideology, such as the extreme right and the extreme left of the political divide. They may be regarded, if the evidence warrants, as qualified sectors.

3. ID.; ID.; ID.; ID.; THE APPLYING PARTY MUST REPRESENT A NARROW RATHER THAN A SPECIFIC DEFINITION OF THE CLASS OF PEOPLE THEY SEEK TO REPRESENT.— Further, to qualify, a party applying for accreditation must represent a narrow rather than a specific definition of the class of people they seek to represent. For example, the Constitution uses the term "labor," a narrower definition than the broad and more abstract term, "working class," without slipping down to the more specific and concrete definition like "carpenters," "security guards," "microchips factory workers," "barbers," "tricycle drivers," and similar sub-groupings in the "labor" group. xxx. Obviously, the level of representation desired by both the Constitution and R.A. 7941 for the party-list system is the second, the narrow definition of the sector that the law regards as "marginalized and underrepresented." The implication of this is that, if any of the sub-groupings (the carpenters, the security guards, the microchips factory workers, the barbers, the tricycle drivers in the example) within the sector desires to apply for accreditation as a party-list group, it must compete with other sub-groups for the seat allotted to the "labor sector" in the House of Representatives. This is the apparent intent of the Constitution and the law. An interpretation that will allow concretely or specifically defined groups to seek election as a separate party-list sector by itself will result in riot and

redundancy in the mix of sectoral parties grabbing seats in the House of Representatives. It will defeat altogether the objectives of the party-list system. If they can muster enough votes, the country may have a party-list of pedicab drivers and another of tricycle drivers. There will be an irrational apportionment of party-list seats in the legislature.

4. ID.; ID.; ID.; ID.; EVERY SECTORAL PARTY-LIST APPLICANT MUST HAVE AN INHERENT REGIONAL OR NATIONAL PRESENCE.— Section 5 of R.A. 7941 provides that parties interested in taking part in the party-list system must state if they are to be considered as national, regional, or sectoral parties. Thus: **Sec. 5. Registration. – Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, x x x.** This provision, taken alongside with the territorial character of the sample sectors provided by the Constitution and R.A. 7941, indicates that every sectoral party-list applicant must have an inherently **regional presence** (indigenous cultural minorities) or a **national presence** (all the rest). The people they represent are not bound up by the territorial borders of provinces, cities, or municipalities. A sectoral group representing the sugar plantation workers of Negros Occidental, for example, will not qualify because it does not represent the inherently national character of the labor sector.

5. ID.; ID.; ID.; ID.; THE APPLYING PARTY MUST PROVE BY CLEAR AND CONVINCING EVIDENCE ITS HISTORY, AUTHENTICITY, ADVOCACY AND MAGNITUDE OF PRESENCE.— Finally, as the Court held in *Ang Bagong Bayani*, it is not enough for a party to claim that it represents the marginalized and underrepresented. That is easy to do. The party must factually and truly represent the marginalized and underrepresented. It must present to the COMELEC clear and convincing evidence of its history, authenticity, advocacy, and magnitude of presence. The COMELEC must reject those who put up building props overnight as in the movies to create an illusion of sectoral presence so they can get through the

door of Congress without running for a seat in a regular legislative district.

6. ID.; ID.; ID.; ID.; REQUIREMENTS FOR SECTORAL PARTY ACCREDITATION MET BY THE PETITIONER PARTY.— *Ang Ladlad* has amply proved that it meets the requirements for sectoral party accreditation. Their members are in the vulnerable class like the women and the youth. *Ang Ladlad* represents a narrow definition of its class (LGBTs) rather than a concrete and specific definition of a sub-group within the class (group of gay beauticians, for example). The people that *Ang Ladlad* seeks to represent have a national presence. The lesbians, gays, bisexuals, and trans-gendered persons in our communities are our brothers, sisters, friends, or colleagues who have suffered in silence all these years. True, the party-list system is not necessarily a tool for advocating tolerance or acceptance of their practices or beliefs. But it does promise them, as a marginalized and underrepresented group, the chance to have a direct involvement in crafting legislations that impact on their lives and existence. It is an opportunity for true and effective representation which is the very essence of our party-list system.

CORONA, *J., dissenting opinion:*

1. POLITICAL LAW; ELECTIONS; PARTY-LIST SYSTEM; PURPOSE.— The party-list system is an innovation of the 1987 Constitution. It is essentially a tool for the advancement of social justice with the fundamental purpose of affording opportunity to marginalized and underrepresented sectors to participate in the shaping of public policy and the crafting of national laws. It is premised on the proposition that the advancement of the interests of the marginalized sectors contributes to the advancement of the common good and of our nation's democratic ideals.

2. ID.; ID.; ID.; TERM "MARGINALIZED AND UNDERREPRESENTED SECTOR," EXPLAINED.— As the oracle of the Constitution, this Court divined the intent of the party-list system and defined its meaning in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*: xxx. [T]he Court stressed that the party-list system is reserved only for those sectors marginalized and underrepresented **in the**

past (*e.g.*, labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, professionals and even those in the underground movement who wish to come out and participate). They are those sectors **traditionally and historically marginalized** and deprived of an opportunity to participate in the formulation of national policy although **their sectoral interests are also traditionally and historically regarded as vital to the national interest**. That is why Section 2 of RA 7941 speaks of "marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that **will benefit the nation as a whole**."

3. ID.; ID.; ID.; MARGINALIZED SECTORS WHOSE INTERESTS ARE TRADITIONALLY AND HISTORICALLY VITAL TO THE NATIONAL INTEREST SHOULD BE GIVEN A SAY IN THE GOVERNANCE THROUGH THE PARTY-LIST SYSTEM.— The interests of marginalized sectors are by tradition and history vital to national interest and therefore beneficial to the nation as a whole because the Constitution declares a national policy recognizing the role of these sectors in the nation's life. In other words, the concept of marginalized and underrepresented sectors under the party-list scheme has been carefully refined by concrete examples involving sectors deemed to be significant in our legal tradition. They are essentially sectors with a constitutional bond, that is, specific sectors subject of specific provisions in the Constitution, namely, labor, peasant, urban poor, indigenous cultural communities, women, youth, veterans, fisherfolk, elderly, handicapped, overseas workers, and professionals. The premise is that the advancement of the interests of these important yet traditionally and historically marginalized sectors promotes the national interest. The Filipino people as a whole are benefited by the empowerment of these sectors. The long-muffled voices of marginalized sectors must be heard because their respective interests are intimately and indispensably woven into the fabric of the national democratic agenda. The social, economic and political aspects of discrimination and marginalization should not be divorced from the role of a particular sector or group in the advancement of the collective goals of Philippine society as a whole. In other words, marginalized sectors should be

given a say in governance through the party-list system, not simply because they desire to say something constructive but because they deserve to be heard on account of their traditionally and historically decisive role in Philippine society.

4. ID.; ID.; ID.; ENUMERATION OF SECTORS CONSIDERED AS MARGINALIZED AND UNDERREPRESENTED IN THE CONSTITUTION AND RA 7941 CANNOT BE DISREGARDED.— Fidelity to the Constitution requires commitment to its text. Thus, in the exercise of its function as official interpreter of the Constitution, the Court should always bear in mind that judicial prudence means that it is safer to construe the Constitution from what appears upon its face. With regard to the matter of what qualifies as marginalized and underrepresented sectors under the party-list system, Section 5(2), Article VI of the Constitution mentions "the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector." On the other hand, the law speaks of "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals." Surely, the enumeration of sectors considered as marginalized and underrepresented in the fundamental law and in the implementing law (RA 7941) cannot be without significance. To ignore them is to disregard the texts of the Constitution and of RA 7941. For, indeed, the very first of *Ang Bagong Bayani-OFW Labor Party*'s eight guidelines for screening party-list participants is this: the parties, sectors or organizations "must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941." xxx

5. ID.; ID.; ID.; ENUMERATION IN SECTION 5 OF REPUBLIC ACT 7941, SIGNIFICANCE THEREOF.— The resolution of petitions for accreditation in the party-list system on a case-to-case basis not tethered to the enumeration of the Constitution and of RA 7941 invites the exercise of unbridled discretion. Unless firmly anchored on the fundamental law and the implementing statute, the party-list system will be a ship floating aimlessly in the ocean of uncertainty, easily tossed by sudden waves of flux and tipped by shifting winds of change in societal attitudes towards certain groups. Surely, the Constitution and RA 7941 did not envision such kind of a system.

Indeed, the significance of the enumeration in Section 5(2), Article VI of the Constitution and Section 5 of RA 7941 is clearly explained in *Ang Bagong Bayani-OFW Labor Party*: "Proportional representation" here does not refer to the number of people in a particular district, because the party-list election is national in scope. Neither does it allude to numerical strength in a distressed or oppressed group. Rather, **it refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration in Section 5 of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."** However, it is not enough for the candidate to claim representation of the marginalized and underrepresented, because representation is easy to claim and to feign**. The party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies mentioned in Section 5**. Concurrently, the persons nominated by the party-list candidate-organization must be "Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties." x x x x x x x x x **The marginalized and underrepresented sectors to be represented under the party-list system are enumerated in Section 5 of RA 7941, xxx While the enumeration of marginalized and underrepresented sectors is not exclusive, it demonstrates the clear intent of the law that not all sectors can be represented under the party-list system**. It is a fundamental principle of statutory construction that words employed in a statute are interpreted in connection with, and their meaning is ascertained by reference to, the words and the phrases with which they are associated or related. Thus, **the meaning of a term in a statute may be limited, qualified or specialized by those in immediate association**. More importantly, in defining the concept of a "sectoral party," Section 3(d) of RA 7941 limits "marginalized and underrepresented sectors" and expressly refers to the list in Section 5 thereof: Section 3. *Definition of Terms*. — x x x (d) A sectoral party refers to an organized group of citizens **belonging to any of the sectors enumerated in Section 5 hereof** whose principal advocacy pertains to the special interest and concerns of their sector, x x x.

6. ID.; ID.; ID.; TERM "MARGINALIZED SECTORS," CONSTRUED.— Petitioner does not question the constitutionality of Sections 2, 3(d) and 5 of RA 7941. (Its charges of violation of non-establishment of religion, equal protection, free speech and free association are all leveled at the assailed resolutions of the Commission on Elections.) Thus, petitioner admits and accepts that its case must rise or fall based on the aforementioned provisions of RA 7941. Following the texts of the Constitution and of RA 7941, and in accordance with established rules of statutory construction and the Court's pronouncement in *Ang Bagong Bayani-OFW Labor Party*, the meaning of "marginalized sectors" under the party list system is **limited and qualified**. Hence, other sectors that may qualify as marginalized and underrepresented should have a **close connection** to the sectors mentioned in the Constitution and in the law. In other words, the marginalized and underrepresented sectors qualified to participate in the party-list system refer only to the labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, professionals and **other related or similar sectors**. This interpretation is faithful to and deeply rooted in the language of the fundamental law and of its implementing statute. It is coherent with the mandate of the Constitution that marginalized sectors qualified to participate in the party-list system but not mentioned in Section 5(2), Article VI are **"such other sectors as may be provided by law" duly enacted by Congress**. It is also consistent with the basic canon of statutory construction, *ejusdem generis*, which requires that a general word or phrase that follows an enumeration of particular and specific words of the same class, the general word or phrase should be construed to include, or to be restricted to persons, things or cases, akin to, resembling, or of the same kind or class as those specifically mentioned. Moreover, it reins in the subjective elements of passion and prejudice that accompany discussions of issues with moral or religious implications as it avoids the need for complex balancing and undue policy-making.

7. ID.; ID.; ID.; FAMILY RESEMBLANCES THAT CHARACTERIZE A SECTOR AS MEMBER OF THE MARGINALIZED AND UNDERREPRESENTED SECTORS.— What is the unifying thread that runs through the marginalized and underrepresented

sectors under the party-list system? What are the family resemblances that would characterize them? Based on the language of the Constitution and of RA 7941 and considering the pronouncements of this Court in *Ang Bagong Bayani-OFW Labor Party* and *BANAT*, the following factors are significant: (a) they must be among, or closely connected with or similar to, the sectors mentioned in Section 5 of RA 7941; (b) they must be sectors whose interests are traditionally and historically regarded as vital to the national interest but they have long been relegated to the fringes of society and deprived of an opportunity to participate in the formulation of national policy; (c) the vinculum that will establish the close connection with or similarity of sectors to those expressly mentioned in Section 5 of RA 7941 is a constitutional provision specifically recognizing the special significance of the said sectors (other than people's organizations, unless such people's organizations represent sectors mentioned in Section 5 of RA 7941) to the advancement of the national interest and (d) while lacking in well-defined political constituencies, they must have regional or national presence to ensure that their interests and agenda will be beneficial not only to their respective sectors but, more importantly, to the nation as a whole.

8. ID.; ID.; ID.; PETITIONER PARTY CANNOT BE PROPERLY CONSIDERED AS MARGINALIZED UNDER THE PARTY-LIST SYSTEM; REASONS.— Even assuming that petitioner was able to show that the community of lesbians, gays, bisexuals and transsexuals (LGBT) is underrepresented, it cannot be properly considered as marginalized under the party-list system. *First*, petitioner is not included in the sectors mentioned in Section 5(2), Article VI of the Constitution and Section 5 of RA 7941. Unless an overly strained interpretation is resorted to, the LGBT sector cannot establish a close connection to any of the said sectors. Indeed, petitioner does not even try to show its link to any of the said sectors. Rather, it represents itself as an altogether distinct sector with its own peculiar interests and agenda. *Second*, petitioner's interest as a sector, which is basically the legal recognition of its members' sexual orientation as a right, cannot be reasonably considered as an interest that is traditionally and historically considered as vital to national interest. At best, petitioner may cite an emergent awareness of the implications of sexual orientation on the

national human rights agenda. However, an emergent awareness is but a confirmation of lack of traditional and historical recognition. Moreover, even the majority admits that there is **no** "clear cut consensus favorable to gay rights claims." *Third*, petitioner is cut off from the common constitutional thread that runs through the marginalized and underrepresented sectors under the party-list system. It lacks the vinculum, a constitutional bond, a provision in the fundamental law that specifically recognizes the LGBT sector as specially significant to the national interest. This standard, implied in *BANAT*, is required to create the necessary link of a particular sector to those sectors expressly mentioned in Section 5(2), Article VI of the Constitution and Section 5 of RA 7941. *Finally*, considering our history and tradition as a people, to consider the promotion of the LGBT agenda and "gay rights" as a national policy as beneficial to the nation as a whole is debatable at best. Even the majority (aside from extensively invoking foreign practice and international conventions rather than Philippine laws) states: We do not suggest that public opinion, even at its most liberal, reflect a clear cut strong consensus favorable to gay rights claims…. This is so unlike the significance of the interests of the sectors in Section 5 of RA 7941 which are, without doubt, indisputable.

9. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THE POWER OF THE SUPREME COURT IS NOT TO CREATE POLICY BUT TO RECOGNIZE, REVIEW AND REVERSE THE POLICY CRAFTED BY THE POLITICAL DEPARTMENTS WHEN A PROPER CASE IS BROUGHT BEFORE IT.— Regardless of the personal beliefs and biases of its individual members, this Court can only apply and interpret the Constitution and the laws. Its power is not to create policy but to recognize, review or reverse the policy crafted by the political departments if and when a proper case is brought before it. Otherwise, it will tread on the dangerous grounds of judicial legislation. In this instance, Congress, in the exercise of its authority under Section 5(2), Article VI of the Constitution, enacted RA 7941. Sections 2, 3(d) and (5) of the said law instituted a policy when it enumerated certain sectors as qualified marginalized and underrepresented sectors under the party-list system. Respect for that policy and fidelity to the Court's duty in our scheme of government require us to declare that only sectors expressly mentioned or closely related to those

sectors mentioned in Section 5 of RA 7941 are qualified to participate in the party-list system. That is the tenor of the Court's rulings in *Ang Bagong Bayani-OFW Labor Party* and *BANAT*. As there is no strong reason for the Court to rule otherwise, *stare decisis* compels a similar conclusion in this case.

10. ID.; ID.; ID.; THE COURT HAS NO POWER TO AMEND AND EXPAND SECTIONS 2, 3 (D) AND 5 OF REPUBLIC ACT 7941 IN THE GUISE OF INTERPRETATION.— The Court is called upon to exercise judicial restraint in this case by strictly adhering to, rather than expanding, legislative policy on the matter of marginalized sectors as expressed in the enumeration in Section 5 of RA 7941. The Court has no power to amend and expand Sections 2, 3(d) and 5 of RA 7941 in the guise of interpretation. The Constitution expressly and exclusively vests the authority to determine "such other [marginalized] sectors" qualified to participate in the party-list system to Congress. Thus, until and unless Congress amends the law to include the LGBT and other sectors in the party-list system, deference to Congress' determination on the matter is proper.

11. ID.; ELECTIONS; PARTY-LIST SYSTEM; NOT DESIGNED AS A TOOL TO ADVOCATE TOLERANCE AND ACCEPTANCE OF ANY AND ALL SOCIALLY MISUNDERSTOOD SECTORS.— Social perceptions of sexual and other moral issues may change over time, and every group has the right to persuade its fellow citizens that its view of such matters is the best. But persuading one's fellow citizens is one thing and insisting on a right to participate in the party-list system is something else. Considering the facts, the law and jurisprudence, petitioner cannot properly insist on its entitlement to use the party-list system as a vehicle for advancing its social and political agenda. While bigotry, social stereotyping and other forms of discrimination must be given no place in a truly just, democratic and libertarian society, the party-list system has a well-defined purpose. The party-list system was not designed as a tool to advocate tolerance and acceptance of any and all socially misunderstood sectors. Rather, it is a platform for the realization of the aspirations of marginalized sectors whose interests are, by nature and history, also the nation's but which interests have not been sufficiently brought to public attention because of these sectors' underrepresentation.

APPEARANCES OF COUNSEL

F.D. Nicholas B. Pichay, Clara Rita A. Padilla and *Ibarra M. Gutierrez* for petitioner.

The Solicitor General for public respondent.

R.A. V. Saguisag for intervenor Epifanio D. Salonga, Jr.

D E C I S I O N

DEL CASTILLO, *J.*:

... [F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Justice Robert A. Jackson
West Virginia State Board of Education v. Barnette[1]

One unavoidable consequence of everyone having the freedom to choose is that others may make different choices — choices we would not make for ourselves, choices we may disapprove of, even choices that may shock or offend or anger us. However, choices are not to be legally prohibited merely because they are different, and the right to disagree and debate about important questions of public policy is a core value protected by our Bill of Rights. Indeed, our democracy is built on genuine recognition of, and respect for, diversity and difference in opinion.

Since ancient times, society has grappled with deep disagreements about the definitions and demands of morality. In many cases, where moral convictions are concerned, harmony among those theoretically opposed is an insurmountable goal. Yet herein lies the paradox – philosophical justifications about what is moral are indispensable and yet at the same time powerless to create agreement. This Court recognizes, however, that practical solutions are preferable to ideological stalemates; accommodation is better than intransigence; reason more worthy than rhetoric. This will allow persons of diverse viewpoints to live together, if not harmoniously, then, at least, civilly.

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[1] 319 U.S. 624, 640-42 (1943).

Factual Background

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court, with an application for a writ of preliminary mandatory injunction, filed by *Ang Ladlad* LGBT Party (*Ang Ladlad*) against the Resolutions of the Commission on Elections (COMELEC) dated November 11, 2009[2] (the First Assailed Resolution) and December 16, 2009[3] (the Second Assailed Resolution) in SPP No. 09-228 (PL) (collectively, the Assailed Resolutions). The case has its roots in the COMELEC's refusal to accredit *Ang Ladlad* as a party-list organization under Republic Act (RA) No. 7941, otherwise known as the Party-List System Act.[4]

Ang Ladlad is an organization composed of men and women who identify themselves as lesbians, gays, bisexuals, or transgendered individuals (LGBTs). Incorporated in 2003, *Ang Ladlad* first applied for registration with the COMELEC in 2006. The application for accreditation was denied on the ground that the organization had no substantial membership base. On August 17, 2009, *Ang Ladlad* again filed a Petition[5] for registration with the COMELEC.

Before the COMELEC, petitioner argued that the LGBT community is a marginalized and under-represented sector that is particularly disadvantaged because of their sexual orientation and gender identity; that LGBTs are victims of exclusion, discrimination, and violence; that because of negative societal attitudes, LGBTs are constrained to hide their sexual orientation; and that *Ang Ladlad* complied with the 8-point guidelines enunciated by this Court in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*.[6] *Ang Ladlad* laid out its

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[2] *Rollo*, pp. 33-40.

[3] *Id.* at 41-74.

[4] An Act Providing For The Election Of Party-List Representatives Through The Party-List System, And Appropriating Funds Therefor (1995).

[5] *Rollo*, pp. 89-101.

[6] 412 Phil. 308 (2001).

national membership base consisting of individual members and organizational supporters, and outlined its platform of governance.[7]

On November 11, 2009, after admitting the petitioner's evidence, the COMELEC (Second Division) dismissed the Petition on moral grounds, stating that:

> x x x This Petition is dismissible on moral grounds. Petitioner defines the Filipino Lesbian, Gay, Bisexual and Transgender (LGBT) Community, thus:
>
> > x x x a marginalized and under-represented sector that is particularly disadvantaged because of their sexual orientation and gender identity.
>
> and proceeded to define sexual orientation as that which:
>
> > x x x refers to a person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender, of the same gender, or more than one gender."
>
> This definition of the LGBT sector makes it crystal clear that petitioner tolerates immorality which offends religious beliefs. In Romans 1:26, 27, Paul wrote:
>
> > For this cause God gave them up into vile affections, for even their women did change the natural use into that which is

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[7] *Ang Ladlad* outlined its platform, *viz:*

As a party-list organization, *Ang Ladlad* is willing to research, introduce, and work for the passage into law of legislative measures under the following platform of government:

a) introduction and support for an anti-discrimination bill that will ensure equal rights for LGBTs in employment and civil life;

b) support for LGBT-related and LGBT-friendly businesses that will contribute to the national economy;

c) setting up of micro-finance and livelihood projects for poor and physically challenged LGBT Filipinos;

d) setting up of care centers that will take care of the medical, legal, pension, and other needs of old and abandoned LGBTs. These centers will be set up initially in the key cities of the country; and

e) introduction and support for bills seeking the repeal of laws used to harass and legitimize extortion against the LGBT community. *Rollo*, p. 100.

against nature: And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet.

In the Koran, the hereunder verses are pertinent:

For ye practice your lusts on men in preference to women "ye are indeed a people transgressing beyond bounds." (7.81) "And we rained down on them a shower (of brimstone): Then see what was the end of those who indulged in sin and crime!" (7:84) "He said: "O my Lord! Help Thou me against people who do mischief" (29:30).

As correctly pointed out by the Law Department in its Comment dated October 2, 2008:

The ANG LADLAD apparently advocates sexual immorality as indicated in the Petition's par. 6F: 'Consensual partnerships or relationships by gays and lesbians who are already of age.' It is further indicated in par. 24 of the Petition which waves for the record: 'In 2007, Men Having Sex with Men or MSMs in the Philippines were estimated as 670,000 (Genesis 19 is the history of Sodom and Gomorrah).

Laws are deemed incorporated in every contract, permit, license, relationship, or accreditation. Hence, pertinent provisions of the Civil Code and the Revised Penal Code are deemed part of the requirement to be complied with for accreditation.

ANG LADLAD collides with Article 695 of the Civil Code which defines nuisance as 'Any act, omission, establishment, business, condition of property, or anything else which x x x (3) shocks, defies; or disregards decency or morality x x x

It also collides with Article 1306 of the Civil Code: 'The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy. Art 1409 of the Civil Code provides that 'Contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy' are inexistent and void from the beginning.

Finally to safeguard the morality of the Filipino community, the Revised Penal Code, as amended, penalizes 'Immoral doctrines, obscene publications and exhibitions and indecent shows' as follows:

> Art. 201. Immoral doctrines, obscene publications and exhibitions, and indecent shows. — The penalty of *prision mayor* or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:
>
> 1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;
>
> 2. (a) The authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;
>
> (b) Those who, in theaters, fairs, cinematographs or any other place, exhibit indecent or immoral plays, scenes, acts or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts or shows, whether live or in film, which are prescribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts.
>
> 3. Those who shall sell, give away or exhibit films, prints, engravings, sculpture or literature which are offensive to morals.

Petitioner should likewise be denied accreditation not only for advocating immoral doctrines but likewise for not being truthful when it said that it "*or any of its nominees/party-list representatives have not violated or failed to comply with laws, rules, or regulations relating to the elections*."

Furthermore, should this Commission grant the petition, we will be exposing our youth to an environment that does not conform to the teachings of our faith. Lehman Strauss, a famous bible teacher and writer in the U.S.A. said in one article that "*older practicing homosexuals are a threat to the youth.*" As an agency of the government, ours too is the State's avowed duty under Section 13,

Article II of the Constitution to protect our youth from moral and spiritual degradation.[8]

When *Ang Ladlad* sought reconsideration,[9] three commissioners voted to overturn the First Assailed Resolution (Commissioners Gregorio Y. Larrazabal, Rene V. Sarmiento, and Armando Velasco), while three commissioners voted to deny *Ang Ladlad's* Motion for Reconsideration (Commissioners Nicodemo T. Ferrer, Lucenito N. Tagle, and Elias R. Yusoph). The COMELEC Chairman, breaking the tie and speaking for the majority in his Separate Opinion, upheld the First Assailed Resolution, stating that:

I. The Spirit of Republic Act No. 7941

Ladlad is applying for accreditation as a sectoral party in the party-list system. Even assuming that it has properly proven its under-representation and marginalization, it cannot be said that *Ladlad*'s expressed sexual orientations *per se* would benefit the nation as a whole.

Section 2 of the party-list law unequivocally states that the purpose of the party-list system of electing congressional representatives is to enable Filipino citizens belonging to marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.

If entry into the party-list system would depend only on the ability of an organization to represent its constituencies, then all representative organizations would have found themselves into the party-list race. But that is not the intention of the framers of the law. The party-list system is not a tool to advocate tolerance and acceptance of misunderstood persons or groups of persons. Rather, **the party-list system is a tool for the realization of aspirations of marginalized individuals whose interests are also the nation's** — only that their interests have not been brought to the attention

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[8] *Id.* at 36-39. Citations omitted. Italics and underscoring in original text.

[9] *Id.* at 77-88.

of the nation because of their under representation. **Until the time comes when *Ladlad* is able to justify that having mixed sexual orientations and transgender identities is beneficial to the nation, its application for accreditation under the party-list system will remain just that.**

II. No substantial differentiation

In the United States, whose equal protection doctrine pervades Philippine jurisprudence, courts do not recognize lesbians, gays, homosexuals, and bisexuals (LGBT) as a "special class" of individuals. x x x Significantly, it has also been held that homosexuality is not a constitutionally protected fundamental right, and that "nothing in the U.S. Constitution discloses a comparable intent to protect or promote the social or legal equality of homosexual relations," as in the case of race or religion or belief.

x x x x x x x x x

Thus, even if society's understanding, tolerance, and acceptance of LGBT's is elevated, there can be no denying that *Ladlad* constituencies are still males and females, and **they will remain either male or female protected by the same Bill of Rights that applies to all citizens alike**.

x x x x x x x x x

IV. Public Morals

x x x There is no question about not imposing on *Ladlad* Christian or Muslim religious practices. Neither is there any attempt to any particular religious group's moral rules on *Ladlad*. Rather, what are being adopted as moral parameters and precepts are generally accepted public morals. They are possibly religious-based, but **as a society, the Philippines cannot ignore its more than 500 years of Muslim and Christian upbringing, such that some moral precepts espoused by said religions have sipped [sic] into society and these are not publicly accepted moral norms.**

V. Legal Provisions

But above morality and social norms, they have become part of the law of the land. Article 201 of the Revised Penal Code imposes the penalty of *prision mayor* upon "Those who shall publicly expound or proclaim doctrines openly contrary to public morals." It penalizes "immoral doctrines, obscene publications and exhibition and indecent

shows." *"Ang Ladlad"* apparently falls under these legal provisions. This is clear from its Petition's paragraph 6F: "Consensual partnerships or relationships by gays and lesbians who are already of age' It is further indicated in par. 24 of the Petition which waves for the record: 'In 2007, Men Having Sex with Men or MSMs in the Philippines were estimated as 670,000. Moreoever, Article 694 of the Civil Code defines "nuisance" as any act, omission x x x or anything else x x x which shocks, defies or disregards decency or morality x x x." These are all unlawful.[10]

On January 4, 2010, *Ang Ladlad* filed this Petition, praying that the Court annul the Assailed Resolutions and direct the COMELEC to grant *Ang Ladlad's* application for accreditation. *Ang Ladlad* also sought the issuance *ex parte* of a preliminary mandatory injunction against the COMELEC, which had previously announced that it would begin printing the final ballots for the May 2010 elections by January 25, 2010.

On January 6, 2010, we ordered the Office of the Solicitor General (OSG) to file its Comment on behalf of COMELEC not later than 12:00 noon of January 11, 2010.[11] Instead of filing a Comment, however, the OSG filed a Motion for Extension, requesting that it be given until January 16, 2010 to Comment.[12] Somewhat surprisingly, the OSG later filed a Comment in support of petitioner's application.[13] Thus, in order to give COMELEC the opportunity to fully ventilate its position, we required it to file its own comment.[14] The COMELEC, through its Law Department, filed its Comment on February 2, 2010.[15]

In the meantime, due to the urgency of the petition, we issued a temporary restraining order on January 12, 2010, effective immediately and continuing until further orders from this Court,

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[10] *Id.* at 50-54. Emphasis and underscoring supplied.

[11] *Id.* at 121.

[12] *Id.* at 129-132.

[13] *Id.* at 151-283.

[14] *Id.* at 284.

[15] *Id.* at 301-596.

directing the COMELEC to cease and desist from implementing the Assailed Resolutions.[16]

Also, on January 13, 2010, the Commission on Human Rights (CHR) filed a Motion to Intervene or to Appear as *Amicus Curiae*, attaching thereto its Comment-in-Intervention.[17] The CHR opined that the denial of *Ang Ladlad's* petition on moral grounds violated the standards and principles of the Constitution, the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR). On January 19, 2010, we granted the CHR's motion to intervene.

On January 26, 2010, Epifanio D. Salonga, Jr. filed his Motion to Intervene[18] which motion was granted on February 2, 2010.[19]

The Parties' Arguments

Ang Ladlad argued that the denial of accreditation, insofar as it justified the exclusion by using religious dogma, violated the constitutional guarantees against the establishment of religion. Petitioner also claimed that the Assailed Resolutions contravened its constitutional rights to privacy, freedom of speech and assembly, and equal protection of laws, as well as constituted violations of the Philippines' international obligations against discrimination based on sexual orientation.

The OSG concurred with *Ang Ladlad's* petition and argued that the COMELEC erred in denying petitioner's application for registration since there was no basis for COMELEC's allegations of immorality. It also opined that LGBTs have their own special interests and concerns which should have been recognized by the COMELEC as a separate classification. However, insofar as the purported violations of petitioner's freedom of speech, expression, and assembly were concerned,

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[16] *Id.* at 126.

[17] *Id.* at 133-160.

[18] *Id.* at 288-291.

[19] *Id.* at 296.

the OSG maintained that there had been no restrictions on these rights.

In its Comment, the COMELEC reiterated that petitioner does not have a concrete and genuine national political agenda to benefit the nation and that the petition was validly dismissed on moral grounds. It also argued ***for the first time*** that the LGBT sector is not among the sectors enumerated by the Constitution and RA 7941, and that petitioner made untruthful statements in its petition when it alleged its national existence contrary to actual verification reports by COMELEC's field personnel.

Our Ruling

We grant the petition.

Compliance with the Requirements of the Constitution and Republic Act No. 7941

The COMELEC denied *Ang Ladlad's* application for registration on the ground that the LGBT sector is neither enumerated in the Constitution and RA 7941, nor is it associated with or related to any of the sectors in the enumeration.

Respondent mistakenly opines that our ruling in *Ang Bagong Bayani* stands for the proposition that only those sectors specifically enumerated in the law or related to said sectors (labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals) may be registered under the party-list system. As we explicitly ruled in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*,[20] "the enumeration of marginalized and under-represented sectors is not exclusive." The crucial element is not whether a sector is specifically enumerated, but whether a particular organization complies with the requirements of the Constitution and RA 7941.

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[20] *Supra* note 6.

Respondent also argues that *Ang Ladlad* made untruthful statements in its petition when it alleged that it had nationwide existence through its members and affiliate organizations. The COMELEC claims that upon verification by its field personnel, it was shown that "save for a few isolated places in the country, petitioner does not exist in almost all provinces in the country."[21]

This argument that "petitioner made untruthful statements in its petition when it alleged its national existence" is a new one; previously, the COMELEC claimed that petitioner was "not being truthful when it said that it or any of its nominees/ party-list representatives have not violated or failed to comply with laws, rules, or regulations relating to the elections." Nowhere was this ground for denial of petitioner's accreditation mentioned or even alluded to in the Assailed Resolutions. This, in itself, is quite curious, considering that the reports of petitioner's alleged non-existence were already available to the COMELEC prior to the issuance of the First Assailed Resolution. At best, this is irregular procedure; at worst, a belated afterthought, a change

[21] It appears that on September 4, 2009, the Second Division directed the various COMELEC Regional Offices to verify the existence, status, and capacity of petitioner. In its Comment, respondent submitted copies of various reports stating that ANG LADLAD LGBT or LADLAD LGBT did not exist in the following areas: Batangas (October 6, 2009); Romblon (October 6, 2009); Palawan (October 16, 2009); Sorsogon (September 29, 2009); Cavite, Marinduque, Rizal (October 12, 2009); Basilan, Maguindanao, Lanao del Sur, Sulu, Tawi Tawi (October 19, 2009); Biliran, Leyte, Southern Leyte, Samar, Eastern Samar, Northern Samar (October 19, 2009); Albay, Camarines Sur, Camarines Norte, Catanduanes, Masbate, Sorsogon (October 25, 2009); Ilocos Sur, Ilocos Norte, La Union, Pangasinan (October 23, 2009); North Cotabato, Sarangani, South Cotabato, Sultan Kudarat (October 23, 2009); Aklan, Antique, Iloilo and Negros Occidental (October 25, 2009); Bohol, Cebu, Siquijor (October 24, 2009); Negros Oriental (October 26, 2009); Cordillera Administrative Region (October 30, 2009); Agusan del Norte, Agusan del Sur, Dinagat Islands, Surigao del Norte, Surigao del Sur (October 26, 2009); Cagayan de Oro, Bukidnon, Camiguin, Misamis Oriental, Lanao del Norte (October 31, 2009); Laguna (November 2, 2009); Occidental Mindoro, Oriental Mindoro (November 13, 2009); Quezon (November 24, 2009); Davao City, Davao del Sur, Davao del Norte, Compostela Valley, Davao Oriental (November 19, 2009); Caloocan, Las Piñas, Makati, Mandaluyong, Manila, Marikina, Muntinlupa, Navotas, Parañaque, Pasay, Pasig, Pateros, Quezon City, San Juan, Taguig, Valenzuela (December 16, 2009). *Rollo*, pp. 323-596.

in respondent's theory, and a serious violation of petitioner's right to procedural due process.

Nonetheless, we find that there has been no misrepresentation. A cursory perusal of *Ang Ladlad's* initial petition shows that it never claimed to exist in each province of the Philippines. Rather, petitioner alleged that the LGBT community in the Philippines was estimated to constitute at least 670,000 persons; that it had 16,100 affiliates and members around the country, and 4,044 members in its electronic discussion group.[22] *Ang Ladlad* also represented itself to be "a national LGBT umbrella organization with affiliates around the Philippines composed of the following LGBT networks":

- Abra Gay Association
- Aklan Butterfly Brigade (ABB) – Aklan
- Albay Gay Association
- Arts Center of Cabanatuan City – Nueva Ecija
- Boys Legion – Metro Manila
- Cagayan de Oro People Like Us (CDO PLUS)
- Can't Live in the Closet, Inc. (CLIC) – Metro Manila
- Cebu Pride – Cebu City
- Circle of Friends
- Dipolog Gay Association – Zamboanga del Norte
- Gay, Bisexual, & Transgender Youth Association (GABAY)
- Gay and Lesbian Activists Network for Gender Equality (GALANG) – Metro Manila
- Gay Men's Support Group (GMSG) – Metro Manila
- Gay United for Peace and Solidarity (GUPS) – Lanao del Norte
- Iloilo City Gay Association – Iloilo City
- Kabulig Writer's Group – Camarines Sur
- Lesbian Advocates Philippines, Inc. (LEAP)
- LUMINA – Baguio City
- Marikina Gay Association – Metro Manila
- Metropolitan Community Church (MCC) – Metro Manila
- Naga City Gay Association – Naga City
- ONE BACARDI

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[22] *Id.* at 96.

- Order of St. Aelred (OSAe) – Metro Manila
- PUP LAKAN
- RADAR PRIDEWEAR
- Rainbow Rights Project (R-Rights), Inc. – Metro Manila
- San Jose del Monte Gay Association – Bulacan
- Sining Kayumanggi Royal Family – Rizal
- Society of Transexual Women of the Philippines (STRAP) – Metro Manila
- Soul Jive – Antipolo, Rizal
- The Link – Davao City
- Tayabas Gay Association – Quezon
- Women's Bisexual Network – Metro Manila
- Zamboanga Gay Association – Zamboanga City[23]

Since the COMELEC only searched for the names *ANG LADLAD* LGBT or *LADLAD* LGBT, it is no surprise that they found that petitioner had no presence in any of these regions. In fact, if COMELEC's findings are to be believed, petitioner does not even exist in Quezon City, which is registered as *Ang Ladlad's* principal place of business.

Against this backdrop, we find that *Ang Ladlad* has sufficiently demonstrated its compliance with the legal requirements for accreditation. Indeed, aside from COMELEC's moral objection and the belated allegation of non-existence, nowhere in the records has the respondent ever found/ruled that *Ang Ladlad* is not qualified to register as a party-list organization under any of the requisites under RA 7941 or the guidelines in *Ang Bagong Bayani*. The difference, COMELEC claims, lies in *Ang Ladlad's* morality, or lack thereof.

Religion as the Basis for Refusal to Accept Ang Ladlad's Petition for Registration

Our Constitution provides in Article III, Section 5 that "[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." At bottom, what our non-establishment clause calls for is "government neutrality in religious

[23] *Id.* at 96-97.

matters."[24] Clearly, "governmental reliance on religious justification is inconsistent with this policy of neutrality."[25] We thus find that it was grave violation of the non-establishment clause for the COMELEC to utilize the Bible and the Koran to justify the exclusion of *Ang Ladlad*.

Rather than relying on religious belief, the legitimacy of the Assailed Resolutions should depend, instead, on whether the COMELEC is able to advance some justification for its rulings beyond mere conformity to religious doctrine. Otherwise stated, government must act for secular purposes and in ways that have primarily secular effects. As we held in *Estrada v. Escritor*:[26]

> x x x The morality referred to in the law is public and necessarily secular, not religious as the dissent of Mr. Justice Carpio holds. "Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms." Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a "compelled religion," anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens.
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> In other words, government action, including its proscription of immorality as expressed in criminal law like concubinage, must have a secular purpose. That is, the government proscribes this conduct because it is "detrimental (or dangerous) to those conditions upon

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[24] BERNAS, *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 346 (2009).

[25] *Estrada v. Escritor*, 455 Phil. 411 (2003), citing Smith, S., "*The Rise and Fall of Religious Freedom in Constitutional Discourse*," 140 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 149, 160 (1991).

[26] 455 Phil. 411 (2003).

which depend the existence and progress of human society" and not because the conduct is proscribed by the beliefs of one religion or the other. Although admittedly, moral judgments based on religion might have a compelling influence on those engaged in public deliberations over what actions would be considered a moral disapprobation punishable by law. After all, they might also be adherents of a religion and thus have religious opinions and moral codes with a compelling influence on them; the human mind endeavors to regulate the temporal and spiritual institutions of society in a uniform manner, harmonizing earth with heaven. Succinctly put, a law could be religious or Kantian or Aquinian or utilitarian in its deepest roots, but it must have an articulable and discernible secular purpose and justification to pass scrutiny of the religion clauses. x x x Recognizing the religious nature of the Filipinos and the elevating influence of religion in society, however, the Philippine constitution's religion clauses prescribe not a strict but a benevolent neutrality. Benevolent neutrality recognizes that government must pursue its secular goals and interests but at the same time strive to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interests.[27]

Public Morals as a Ground to Deny Ang Ladlad's Petition for Registration

Respondent suggests that although the moral condemnation of homosexuality and homosexual conduct may be religion-based, it has long been transplanted into generally accepted public morals. The COMELEC argues:

> Petitioner's accreditation was denied not necessarily because their group consists of LGBTs but because of the danger it poses to the people especially the youth. Once it is recognized by the government, a sector which believes that there is nothing wrong in having sexual relations with individuals of the same gender is a bad example. It will bring down the standard of morals we cherish in our civilized society. Any society without a set of moral precepts is in danger of losing its own existence.[28]

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[27] *Id.* at 588-589.

[28] *Rollo,* p. 315.

We are not blind to the fact that, through the years, homosexual conduct, and perhaps homosexuals themselves, have borne the brunt of societal disapproval. It is not difficult to imagine the reasons behind this censure — religious beliefs, convictions about the preservation of marriage, family, and procreation, even dislike or distrust of homosexuals themselves and their perceived lifestyle. Nonetheless, we recall that the Philippines has not seen fit to criminalize homosexual conduct. Evidently, therefore, these "generally accepted public morals" have not been convincingly transplanted into the realm of law.[29]

The Assailed Resolutions have not identified any specific overt immoral act performed by *Ang Ladlad*. Even the OSG agrees that "there should have been a finding by the COMELEC that the group's members have committed or are committing immoral acts."[30] The OSG argues:

> x x x A person may be sexually attracted to a person of the same gender, of a different gender, or more than one gender, but mere attraction does not translate to immoral acts. There is a great divide between thought and action. *Reduction ad absurdum*. If immoral thoughts could be penalized, COMELEC would have its hands full of disqualification cases against both the "straights" and the gays." Certainly this is not the intendment of the law.[31]

Respondent has failed to explain what societal ills are sought to be prevented, or why special protection is required for the youth. Neither has the COMELEC condescended to justify its position that petitioner's admission into the party-list system

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[29] *In Anonymous v. Radam*, A.M. No. P-07-2333, December 19, 2007, 541 SCRA 12, citing Concerned Employee v. Mayor, A.M. No. P-02-1564, 23 November 2004, 443 SCRA 448, we ruled that immorality cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws. At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority.

[30] *Rollo*, p. 178.

[31] *Id.* at 179-180.

would be so harmful as to irreparably damage the moral fabric of society. We, of course, do not suggest that the state is wholly without authority to regulate matters concerning morality, sexuality, and sexual relations, and we recognize that the government will and should continue to restrict behavior considered detrimental to society. Nonetheless, we cannot countenance advocates who, undoubtedly with the loftiest of intentions, situate morality on one end of an argument or another, without bothering to go through the rigors of legal reasoning and explanation. In this, the notion of morality is robbed of all value. Clearly then, the bare invocation of morality will not remove an issue from our scrutiny.

We also find the COMELEC's reference to purported violations of our penal and civil laws flimsy, at best; disingenuous, at worst. Article 694 of the Civil Code defines a nuisance as "any act, omission, establishment, condition of property, or anything else which shocks, defies, or disregards decency or morality," the remedies for which are a prosecution under the Revised Penal Code or any local ordinance, a civil action, or abatement without judicial proceedings.[32] A violation of Article 201 of the Revised Penal Code, on the other hand, requires proof beyond reasonable doubt to support a criminal conviction. It hardly needs to be emphasized that mere allegation of violation of laws is not proof, and a mere blanket invocation of public morals cannot replace the institution of civil or criminal proceedings and a judicial determination of liability or culpability.

As such, we hold that moral disapproval, without more, is not a sufficient governmental interest to justify exclusion of homosexuals from participation in the party-list system. The denial of *Ang Ladlad's* registration on purely moral grounds amounts more to a statement of dislike and disapproval of homosexuals, rather than a tool to further any substantial public interest. Respondent's blanket justifications give rise to the inevitable conclusion that the COMELEC targets homosexuals themselves as a class, not because of any particular morally

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[32] CIVIL CODE OF THE PHILIPPINES, Art. 699.

reprehensible act. It is this selective targeting that implicates our equal protection clause.

Equal Protection

Despite the absolutism of Article III, Section 1 of our Constitution, which provides "*nor shall any person be denied equal protection of the laws*," courts have never interpreted the provision as an absolute prohibition on classification. "Equality," said Aristotle, "consists in the same treatment of similar persons."[33] The equal protection clause guarantees that no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances.[34]

Recent jurisprudence has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the classification as long as it bears a rational relationship to some legitimate government end.[35] In *Central Bank Employees*

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[33] POLITICS VII. 14.

[34] *Abakada Guro Party v. Executive Secretary*, G.R. No. 168056, September 1, 2005, 2005, 469 SCRA 1, 139.

[35] In BERNAS, *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 139-140 (2009), Fr. Joaquin Bernas, S.J. writes:

> For determining the reasonableness of classification, later jurisprudence has developed three kinds of test[s] depending on the subject matter involved. The most demanding is the strict scrutiny test which requires the government to show that the challenged classification serves a compelling state interest and that the classification is necessary to serve that interest. This [case] is used in cases involving classifications based on race, national origin, religion, alienage, denial of the right to vote, interstate migration, access to courts, and other rights recognized as fundamental.
>
> Next is the intermediate or middle-tier scrutiny test which requires government to show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest. This is applied to suspect classifications like gender or illegitimacy.
>
> The most liberal is the minimum or rational basis scrutiny according to which government need only show that the challenged classification is rationally related to serving a legitimate state interest. This is the traditional rationality test and it applies to all subjects other than those listed above.

Association, Inc. v. Banko Sentral ng Pilipinas,[36] we declared that "[i]n our jurisdiction, the standard of analysis of equal protection challenges x x x have followed the 'rational basis' test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution."[37]

The COMELEC posits that the majority of the Philippine population considers homosexual conduct as immoral and unacceptable, and this constitutes sufficient reason to disqualify the petitioner. Unfortunately for the respondent, the Philippine electorate has expressed no such belief. No law exists to criminalize homosexual behavior or expressions or parties about homosexual behavior. Indeed, even if we were to assume that public opinion is as the COMELEC describes it, the asserted state interest here — that is, moral disapproval of an unpopular minority — is not a legitimate state interest that is sufficient to satisfy rational basis review under the equal protection clause. The COMELEC's differentiation, and its unsubstantiated claim that *Ang Ladlad* cannot contribute to the formulation of legislation that would benefit the nation, furthers no legitimate state interest other than disapproval of or dislike for a disfavored group.

From the standpoint of the political process, the lesbian, gay, bisexual, and transgender have the same interest in participating in the party-list system on the same basis as other political parties similarly situated. State intrusion in this case is equally burdensome. Hence, laws of general application should apply with equal force to LGBTs, and they deserve to participate in the party-list system on the same basis as other marginalized and under-represented sectors.

It bears stressing that our finding that COMELEC's act of differentiating LGBTs from heterosexuals insofar as the party-list system is concerned does not imply that any other law distinguishing between heterosexuals and homosexuals under

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[36] 487 Phil. 531, 583 (2004).

[37] *Id.* at 584. See also *Mid-States Freight Lines v. Bates*, 111 N.Y.S. 2d 568.

different circumstances would similarly fail. We disagree with the OSG's position that homosexuals are a class in themselves for the purposes of the equal protection clause.[38] We are not prepared to single out homosexuals as a separate class meriting special or differentiated treatment. We have not received sufficient evidence to this effect, and it is simply unnecessary to make such a ruling today. Petitioner itself has merely demanded that it be recognized under the same basis as all other groups similarly situated, and that the COMELEC made "an unwarranted and impermissible classification not justified by the circumstances of the case."

Freedom of Expression and Association

Under our system of laws, every group has the right to promote its agenda and attempt to persuade society of the validity of its position through normal democratic means.[39] It is in the public square that deeply held convictions and differing opinions should be distilled and deliberated upon. As we held in *Estrada v. Escritor:*[40]

> In a democracy, this common agreement on political and moral ideas is distilled in the public square. Where citizens are free, every opinion, every prejudice, every aspiration, and every moral discernment has access to the public square where people deliberate the order of their life together. Citizens are the bearers of opinion, including opinion shaped by, or espousing religious belief, and these citizens have equal access to the public square. In this representative democracy, the state is prohibited from determining which convictions

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[38] The OSG argues that "[w]hile it is true that LGBTs are immutably males and females, and they are protected by the same Bill of Rights that applies to all citizens alike, it cannot be denied that as a sector, LGBTs have their own special interests and concerns." *Rollo*, p. 183.

[39] Article III, Section 4 of the Constitution provides that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."

[40] *Supra* note 26.

and moral judgments may be proposed for public deliberation. Through a constitutionally designed process, the people deliberate and decide. Majority rule is a necessary principle in this democratic governance. Thus, when public deliberation on moral judgments is finally crystallized into law, the laws will largely reflect the beliefs and preferences of the majority, *i.e.*, the mainstream or median groups. Nevertheless, in the very act of adopting and accepting a constitution and the limits it specifies — including protection of religious freedom "not only for a minority, however small — not only for a majority, however large — but for each of us" — the majority imposes upon itself a self-denying ordinance. It promises not to do what it otherwise could do: to ride roughshod over the dissenting minorities.

Freedom of expression constitutes one of the essential foundations of a democratic society, and this freedom applies not only to those that are favorably received but also to those that offend, shock, or disturb. Any restriction imposed in this sphere must be proportionate to the legitimate aim pursued. Absent any compelling state interest, it is not for the COMELEC or this Court to impose its views on the populace. Otherwise stated, the COMELEC is certainly not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one.

This position gains even more force if one considers that homosexual conduct is not illegal in this country. It follows that both expressions concerning one's homosexuality and the activity of forming a political association that supports LGBT individuals are protected as well.

Other jurisdictions have gone so far as to categorically rule that even overwhelming public perception that homosexual conduct violates public morality does not justify criminalizing same-sex conduct.[41] European and United Nations judicial

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[41] In *Bowers v. Hardwick*, 478 U.S. 186 (1986), the US Supreme Court first upheld the constitutionality of a Georgia sodomy law that criminalized oral and anal sex in private between consenting adults when applied to homosexuals. Seventeen years later the Supreme Court directly overruled *Bowers* in *Lawrence v. Texas*, 539 U.S. 558 (2003), holding that "*Bowers* was not correct when it was decided, and it is not correct today."

decisions have ruled in favor of gay rights claimants on both privacy and equality grounds, citing general privacy and equal

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In *Lawrence,* the US Supreme Court has held that the liberty protected by the Constitution allows homosexual persons the right to choose to enter into intimate relationships, whether or not said relationships were entitled to formal or legal recognition.

Our prior cases make two propositions abundantly clear. First, the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; neither history nor tradition could save a law prohibiting miscegenation from constitutional attack. Second, individual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of "liberty" protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons.

The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter. The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.

In similar fashion, the European Court of Human Rights has ruled that the avowed state interest in protecting public morals did not justify interference into private acts between homosexuals. In *Norris v. Ireland,* the European Court held that laws criminalizing same-sex sexual conduct violated the right to privacy enshrined in the European Convention.

The Government are in effect saying that the Court is precluded from reviewing Ireland's observance of its obligation not to exceed what is necessary in a democratic society when the contested interference with an Article 8 (Art. 8) right is in the interests of the "protection of morals". The Court cannot accept such an interpretation. x x x.

x x x The present case concerns a most intimate aspect of private life. Accordingly, there must exist particularly serious reasons before interferences on the part of public authorities can be legitimate x x x.

protection provisions in foreign and international texts.[42] To the extent that there is much to learn from other jurisdictions that have reflected on the issues we face here, such jurisprudence is certainly illuminating. These foreign authorities, while not formally binding on Philippine courts, may nevertheless have persuasive influence on the Court's analysis.

In the area of freedom of expression, for instance, United States courts have ruled that existing free speech doctrines protect gay and lesbian rights to expressive conduct. In order to justify the prohibition of a particular expression of opinion, public institutions must show that their actions were caused by "something

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x x x Although members of the public who regard homosexuality as immoral may be shocked, offended or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults alone who are involved. (*Norris v. Ireland* (judgment of October 26, 1988, Series A no. 142, pp. 20-21, § 46); *Marangos v. Cyprus* (application no. 31106/96, Commission's report of 3 December 1997, unpublished)).

The United Nations Human Rights Committee came to a similar conclusion in *Toonen v. Australia* (Comm. No. 488/1992 U.N. GAOR Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/c/50/D/488/1992 (1994)), involving a complaint that Tasmanian laws criminalizing consensual sex between adult males violated the right to privacy under Article 17 of the International Covenant on Civil and Political Rights. The Committee held:

x x x it is undisputed that adult consensual sexual activity in private is covered by the concept of 'privacy' x x x any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

[42] See *Toonen v. Australia*, (Comm. No. 488/1992 U.N. GAOR Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/c/50/D/488/1992 (1994)); *Dudgeon v. United Kingdom*, 45 Eur. H.R. Rep. 52 (1981) (decision by the European Court of Human Rights, construing the European Convention on Human Rights and Fundamental Freedoms); *Norris v. Ireland*, 13 Eur. Ct. H.R. 186 (1991); *Modinos v. Cyprus*, 16 Eur. H.R. Rep. 485 (1993). *See also*, *L. and V. v. Austria* (2003-I 29; (2003) 36 EHRR 55) and *S.L. v. Austria* (2003-I 71; (2003) 37 EHRR 39), where the European Court considered that Austria's differing age of consent for heterosexual and homosexual relations was discriminatory; it 'embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority', which could not 'amount to sufficient justification for the differential treatment any more than similar negative attitudes towards those of a different race, origin or colour.'

more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."[43]

With respect to freedom of association for the advancement of ideas and beliefs, in Europe, with its vibrant human rights tradition, the European Court of Human Rights (ECHR) has repeatedly stated that a political party may campaign for a change in the law or the constitutional structures of a state if it uses legal and democratic means and the changes it proposes are consistent with democratic principles. The ECHR has emphasized that political ideas that challenge the existing order and whose realization is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of association, even if such ideas may seem shocking or unacceptable to the authorities or the majority of the population.[44] A political group should not be hindered solely because it seeks to publicly debate controversial political issues in order to find solutions capable of satisfying everyone concerned.[45] Only if a

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[43] See *Fricke v. Lynch*, 491 F. Supp. 381 (1980) and *Gay Student Services v. Texas A&M University*, 737 F. 2d 1317 (1984).

[44] *Case of the United Macedonian Organisation Ilinden and Others v. Bulgaria* Application No. 5941/00; Judgment of January 20, 2006. Note that in *Baczkowski and Others v. Poland*, Application No. 1543/06; Judgment of May 3, 2007, the ECHR unanimously ruled that the banning of an LGBT gay parade in Warsaw was a discriminatory violation of Article 14 of the ECHR, which provides:

> The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

It also found that banning LGBT parades violated the group's freedom of assembly and association. Referring to the hallmarks of a "democratic society," the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.

[45] *Case of Freedom & Democracy Party (OZDEP) v. Turkey*, Application No. 23885/94; Judgment of December 8, 1999.

political party incites violence or puts forward policies that are incompatible with democracy does it fall outside the protection of the freedom of association guarantee.[46]

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[46] Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) provides:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively.

[*] Note that while the state is not permitted to discriminate against homosexuals, private individuals cannot be compelled to accept or condone homosexual conduct as a legitimate form of behavior. In *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.* (515 U.S. 557 (1995), the US Supreme Court discussed whether anti-discrimination legislation operated to require the organizers of a private St. Patrick's Day parade to include among the marchers an Irish-American gay, lesbian, and bisexual group. The court held that private citizens organizing a public demonstration may not be compelled by the state to include groups that impart a message the organizers do not want to be included in their demonstration. The court observed:

> "[A] contingent marching behind the organization's banner would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and the presence of the organized marchers would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals x x x. The parade's organizers may not believe these facts about Irish sexuality to be so, or they may object to unqualified social acceptance of gays and lesbians or have some other reason for wishing to keep GLIB's message out

We do not doubt that a number of our citizens may believe that homosexual conduct is distasteful, offensive, or even defiant. They are entitled to hold and express that view. On the other hand, LGBTs and their supporters, in all likelihood, believe with equal fervor that relationships between individuals of the same sex are morally equivalent to heterosexual relationships. They, too, are entitled to hold and express that view. However, as far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community.

Of course, none of this suggests the impending arrival of a golden age for gay rights litigants. It well may be that this Decision will only serve to highlight the discrepancy between the rigid constitutional analysis of this Court and the more complex moral sentiments of Filipinos. We do not suggest that public opinion, even at its most liberal, reflect a clear-cut strong consensus favorable to gay rights claims and we neither attempt nor expect to affect individual perceptions of homosexuality through this Decision.

> of the parade. But whatever the reason, it boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control."
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> So, too, in *Boy Scouts of America v. Dale* (530 U.S. 640 [2000]), the US Supreme Court held that the Boy Scouts of America could not be compelled to accept a homosexual as a scoutmaster, because "the Boy Scouts believe that homosexual conduct is inconsistent with the values it seeks to instill in its youth members; it will not "promote homosexual conduct as a legitimate form of behavior."
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> When an expressive organization is compelled to associate with a person whose views the group does not accept, the organization's message is undermined; the organization is understood to embrace, or at the very least tolerate, the views of the persons linked with them. The scoutmaster's presence "would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior."

The OSG argues that since there has been neither prior restraint nor subsequent punishment imposed on *Ang Ladlad*, and its members have not been deprived of their right to voluntarily associate, then there has been no restriction on their freedom of expression or association. The OSG argues that:

> There was no utterance restricted, no publication censored, or any assembly denied. [COMELEC] simply exercised its authority to review and verify the qualifications of petitioner as a sectoral party applying to participate in the party-list system. This lawful exercise of duty cannot be said to be a transgression of Section 4, Article III of the Constitution.
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> x x x x x x x x x
>
> A denial of the petition for registration x x x does not deprive the members of the petitioner to freely take part in the conduct of elections. Their right to vote will not be hampered by said denial. In fact, the right to vote is a constitutionally-guaranteed right which cannot be limited.
>
> As to its right to be elected in a genuine periodic election, petitioner contends that the denial of Ang Ladlad's petition has the clear and immediate effect of limiting, if not outrightly nullifying the capacity of its members to fully and equally participate in public life through engagement in the party list elections.
>
> This argument is puerile. The holding of a public office is not a right but a privilege subject to limitations imposed by law. x x x[47]

The OSG fails to recall that petitioner has, in fact, established its qualifications to participate in the party-list system, and — as advanced by the OSG itself — the moral objection offered by the COMELEC was not a limitation imposed by law. To the extent, therefore, that the petitioner has been precluded, because of COMELEC's action, from publicly expressing its views as a political party and participating on an equal basis in the political process with other equally-qualified party-list candidates, we find that there has, indeed, been a transgression of petitioner's fundamental rights.

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[47] *Rollo*, pp. 197-199.

Non-Discrimination and International Law

In an age that has seen international law evolve geometrically in scope and promise, international human rights law, in particular, has grown dynamically in its attempt to bring about a more just and humane world order. For individuals and groups struggling with inadequate structural and governmental support, international human rights norms are particularly significant, and should be effectively enforced in domestic legal systems so that such norms may become actual, rather than ideal, standards of conduct.

Our Decision today is fully in accord with our international obligations to protect and promote human rights. In particular, we explicitly recognize the principle of non-discrimination as it relates to the right to electoral participation, enunciated in the UDHR and the ICCPR.

The principle of non-discrimination is laid out in Article 26 of the ICCPR, as follows:

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In this context, the principle of non-discrimination requires that laws of general application relating to elections be applied equally to all persons, regardless of sexual orientation. Although sexual orientation is not specifically enumerated as a status or ratio for discrimination in Article 26 of the ICCPR, the ICCPR Human Rights Committee has opined that the reference to "sex" in Article 26 should be construed to include "sexual orientation."[48]

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[48] In *Toonen v. Australia, supra* note 42, the Human Rights Committee noted that "in its view the reference to 'sex' in Articles 2, paragraph 2, and 26 is to be taken as including sexual orientation."

Additionally, a variety of United Nations bodies have declared discrimination on the basis of sexual orientation to be prohibited under various international agreements.[49]

The UDHR provides:

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Likewise, the ICCPR states:

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[49] The Committee on Economic, Social and Cultural Rights (CESCR) has dealt with the matter in its General Comments, the interpretative texts it issues to explicate the full meaning of the provisions of the Covenant on Economic, Social and Cultural Rights. In General Comments Nos. 18 of 2005 (on the right to work) (Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work, E/C.12/GC/18, November 24, 2005), 15 of 2002 (on the right to water) (Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water, E/C.12/2002/11, November 26, 2002) and 14 of 2000 (on the right to the highest attainable standard of health) (Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, E/C.12/2000/4, August 14, 2000), it has indicated that the Covenant proscribes any discrimination on the basis of, *inter-alia*, sex and sexual orientation.

The Committee on the Rights of the Child (CRC) has also dealt with the issue in a General Comment. In its General Comment No. 4 of 2003, it stated that, "State parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention [on the Rights of the Child] without discrimination (Article 2), including with regard to ''race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.'' These grounds also cover [*inter alia*] sexual orientation." (Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, July 1, 2003, CRC/GC/2003/4).

The Committee on the Elimination of Discrimination Against Women (CEDAW), has, on a number of occasions, criticized States for discrimination on the basis of sexual orientation. For example, it also addressed the situation in Kyrgyzstan and recommended that, "lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished" (Concluding Observations of the Committee on the Elimination of Discrimination Against Women regarding Kyrgyzstan, February 5, 1999, A/54/38 at par. 128).

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

As stated by the CHR in its Comment-in-Intervention, the scope of the right to electoral participation is elaborated by the Human Rights Committee in its General Comment No. 25 (Participation in Public Affairs and the Right to Vote) as follows:

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

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15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative

provisions which exclude any group or category of persons from elective office.[50]

We stress, however, that although this Court stands willing to assume the responsibility of giving effect to the Philippines' international law obligations, the blanket invocation of international law is not the panacea for all social ills. We refer now to the petitioner's invocation of the *Yogyakarta Principles* (the Application of International Human Rights Law In Relation to Sexual Orientation and Gender Identity),[51] which petitioner declares to reflect binding principles of international law.

At this time, we are not prepared to declare that these *Yogyakarta Principles* contain norms that are obligatory on the Philippines. There are declarations and obligations outlined in said Principles which are not reflective of the current state of international law, and do not find basis in any of the sources of international law enumerated under Article 38(1) of the Statute of the International Court of Justice.[52] Petitioner has not

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[50] General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) December 16, 1996. CCPR/C/21/Rev.1/Add.7.

[51] The *Yogyakarta Principles* on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity is a set of international principles relating to sexual orientation and gender identity, intended to address documented evidence of abuse of rights of lesbian, gay, bisexual, and transgender (LGBT) individuals. It contains 29 Principles adopted by human rights practitioners and experts, together with recommendations to governments, regional intergovernmental institutions, civil society, and the United Nations.

[52] One example is Principle 3 (The Right to Recognition Before the Law), which provides:

> Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such

undertaken any objective and rigorous analysis of these alleged principles of international law to ascertain their true status.

We also hasten to add that not everything that society — or a certain segment of society — wants or demands is automatically a human right. This is not an arbitrary human intervention that may be added to or subtracted from at will. It is unfortunate that much of what passes for human rights today is a much broader context of needs that identifies many social desires as rights in order to further claims that international law obliges states to sanction these innovations. This has the effect of diluting real human rights, and is a result of the notion that if "wants" are couched in "rights" language, then they are no longer controversial.

Using even the most liberal of lenses, these *Yogyakarta Principles*, consisting of a declaration formulated by various

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to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

States shall:

a) Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;

b) **Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity;**

c) **Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity;**

d) Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;

e) Ensure that changes to identity documents will be recognized in all contexts where the identification or disaggregation of persons by gender is required by law or policy;

f) Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment. (Emphasis ours)

international law professors, are — at best — *de lege ferenda* — and do not constitute binding obligations on the Philippines. Indeed, so much of contemporary international law is characterized by the "soft law" nomenclature, *i.e.*, international law is full of principles that promote international cooperation, harmony, and respect for human rights, most of which amount to no more than well-meaning desires, without the support of either State practice or *opinio juris*.[53]

As a final note, we cannot help but observe that the social issues presented by this case are emotionally charged, societal attitudes are in flux, even the psychiatric and religious communities are divided in opinion. This Court's role is not to impose its own view of acceptable behavior. Rather, it is to apply the Constitution and laws as best as it can, uninfluenced by public opinion, and confident in the knowledge that our democracy is resilient enough to withstand vigorous debate.

WHEREFORE, the Petition is hereby *GRANTED*. The Resolutions of the Commission on Elections dated November 11, 2009 and December 16, 2009 in SPP No. 09-228 (PL) are hereby *SET ASIDE*. The Commission on Elections is directed to *GRANT* petitioner's application for party-list accreditation.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Puno, C.J., see separate opinion.

Carpio Morales, Nachura, and *Peralta, JJ.,* join the concurring opinion of *J.* Abad.

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[53] See *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*, G.R. No. 173034, October 9, 2007, 535 SCRA 265, where we explained that "soft law" does not fall into any of the categories of international law set forth in Article 38, Chapter III of the 1946 Statute of the International Court of Justice. It is, however, an expression of non-binding norms, principles, and practices that influence state behavior. Certain declarations and resolutions of the UN General Assembly fall under this category.

Abad, J., the *C.J.* certifies that *J.* Abad wrote a separate concurring opinion.

Corona, J., see dissenting opinion.

Brion, J., joins dissent of *J.* Corona.

SEPARATE CONCURRING OPINION

PUNO, *C.J.*:

I concur with the groundbreaking *ponencia* of my esteemed colleague, Mr. Justice Mariano C. del Castillo. Nonetheless, I respectfully submit this separate opinion to underscore some points that I deem significant.

FIRST. The assailed Resolutions of the Commission on Elections (COMELEC) run afoul of the non-establishment clause[1] of the Constitution. There was cypher effort on the part of the COMELEC to couch its reasoning in legal — much less constitutional — terms, as it denied Ang Ladlad's petition for registration as a sectoral party principally on the ground that it "tolerates immorality which offends religious (*i.e.*, Christian[2] and Muslim[3]) beliefs." To be sure, the COMELEC's ruling is

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[1] Section 5, Article III of the 1987 Constitution states: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

[2] The November 11, 2009 Resolution of the COMELEC cited the following passage from the Bible to support its holding: "For this cause God gave them up into vile affections: for even their women did change the natural use into that which is against nature: And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet." (Romans 1:26-27)

[3] The November 11, 2009 Resolution of the COMELEC cited the following passages from the Koran to support its holding:

completely antithetical to the fundamental rule that "[t]he public morality expressed in the law is **necessarily secular**[,] for in our constitutional order, the religion clauses prohibit the state from establishing a religion, **including the morality it sanctions**."[4] As we explained in ***Estrada v. Escritor,***[5] the requirement of an articulable and discernible secular purpose is meant to give flesh to the constitutional policy of full religious freedom for all, *viz.:*

> Religion also dictates "how we ought to live" for the nature of religion is not just to know, but often, to act in accordance with man's "views of his relations to His Creator." But the Establishment Clause puts a negative bar against establishment of this morality arising from one religion or the other, and implies the affirmative "establishment" of a civil order for the resolution of public moral disputes. *This agreement on a secular mechanism is the price of ending the "war of all sects against all"; the establishment of a secular public moral order is the social contract produced by religious truce.*
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> Thus, when the law speaks of "immorality" in the Civil Service Law or "immoral" in the Code of Professional Responsibility for lawyers, or "public morals" in the Revised Penal Code, or "morals" in the New Civil Code, or "moral character" in the Constitution, the distinction between public and secular morality on the one hand, and religious morality, on the other, should be kept in mind. The morality referred to in the law is public and necessarily secular, not religious as the dissent of Mr. Justice Carpio holds. "Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms." *Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the*

· "For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds." (7:81)

· "And we rained down on them a shower (of brimstone): Then see what was the end of those who indulged in sin and crime!" (7.84)

· "He said: "O my Lord! Help Thou me against people who do mischief!" (29:30)

[4] *Estrada v. Escritor*, 455 Phil. 411 (2003).

[5] *Id.*

resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, i.e., to a "compelled religion"; anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens. Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality.[6] (citations omitted and italics supplied)

Consequently, the assailed resolutions of the COMELEC are violative of the constitutional directive that **no religious test shall be required for the exercise of civil or political rights**.[7] Ang Ladlad's right of political participation was unduly infringed when the COMELEC, swayed by the private biases and personal prejudices of its constituent members, arrogated unto itself the role of a religious court or worse, a morality police.

The COMELEC attempts to disengage itself from this "excessive entanglement"[8] with religion by arguing that we "cannot ignore our strict religious upbringing, whether Christian or Muslim"[9] since the "moral precepts espoused by [these] religions have slipped into society and … are now publicly accepted moral norms."[10] However, as correctly observed by Mr. Justice del Castillo, the Philippines has not seen fit to disparage homosexual conduct as to actually criminalize it. Indeed, even if the State has legislated to this effect, the law is vulnerable to constitutional

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[6] *Id.*

[7] Section 5, Article III of the 1987 Constitution.

[8] *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

[9] COMELEC's Comment, p. 13.

[10] *Id.*

attack on privacy grounds.[11] These alleged "generally accepted public morals" have not, in reality, crossed over from the religious to the secular sphere.

Some people may find homosexuality and bisexuality deviant, odious, and offensive. Nevertheless, private discrimination, however unfounded, cannot be attributed or ascribed to the State. Mr. Justice Kennedy, speaking for the United States (U.S.) Supreme Court in the landmark case of *Lawrence v. Texas*,[12] opined:

> It must be acknowledged, of course, that the Court in *Bowers* was making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has been shaped by religious beliefs, conceptions of right and acceptable behavior, and respect for the traditional family. For many persons these are not trivial concerns but profound and deep convictions accepted as ethical and moral principles to which they aspire and which thus determine the course of their lives. These considerations do not answer the question before us, however. *The issue is whether the majority may use the power of the State to enforce these views on the whole society through operation of the … law. "Our obligation is to define the liberty of all, not to mandate our own moral code."*[13]

SECOND. The COMELEC capitalized on Ang Ladlad's definition of the term "sexual orientation,"[14] as well as its citation of the number of Filipino men who have sex with men,[15] as

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[11] See *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472.

[12] *Id*.

[13] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 850, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

[14] Ang Ladlad defined "sexual orientation" as a person's capacity for profound emotional, affectional and sexual attraction to, and *intimate and sexual relations with*, individuals of a *different gender*, *of the same gender*, *or more than one gender*." (italics supplied)

[15] Paragraph 24 of Ang Ladlad's Petition for Registration stated, in relevant part: "In 2007, Men Having Sex with Men or MSMs in the Philippines were estimated at 670,000."

basis for the declaration that the party espouses and advocates sexual immorality. **This position, however, would deny homosexual and bisexual individuals a fundamental element of personal identity and a legitimate exercise of personal liberty**. For, the "ability to [independently] define one's identity that is central to any concept of liberty" cannot truly be exercised in a vacuum; we all depend on the "emotional enrichment from close ties with others."[16] As Mr. Justice Blackmun so eloquently said in his stinging dissent in ***Bowers v. Hardwick***[17] (overturned by the United States Supreme Court seventeen years later in ***Lawrence v. Texas***[18]):

Only the most willful blindness could obscure the fact that sexual intimacy is "a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality[.]"[19] The fact that individuals define themselves in a significant way through their intimate sexual relationships with others suggests, in a Nation as diverse as ours, that there may be many "right" ways of conducting those relationships, and that much of the richness of a relationship will *come from the freedom an individual has to choose the form and nature of these intensely personal bonds*.[20]

In a variety of circumstances we have recognized that *a necessary corollary of giving individuals freedom to choose how to conduct their lives is acceptance of the fact that different individuals will make different choices*. For example, in holding that the clearly

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[16] *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, as cited in the Dissenting Opinion of Mr. Justice Blackmun in *Bowers v. Hardwick, infra*.

[17] 478 U.S. 186, 106 S.Ct. 2841.

[18] *Supra* note 11.

[19] *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 63, 93 S.Ct. 2628, 2638, 37 L.Ed.2d 446 (1973); See also *Carey v. Population Services International*, 431 U.S. 678, 685, 97 S.Ct. 2010, 2016, 52 L.Ed.2d 675 (1977).

[20] See Karst, *The Freedom of Intimate Association*, 89 Yale L.J. 624, 637 (1980); cf. *Eisenstadt v. Baird*, 405 U.S. 438, 453, 92 S.Ct. 1029, 1038, 31 L.Ed.2d 349 (1972); *Roe v. Wade*, 410 U.S., at 153, 93 S.Ct., at 726.

important state interest in public education should give way to a competing claim by the Amish to the effect that extended formal schooling threatened their way of life, the Court declared: "There can be no assumption that today's majority is 'right' and the Amish and others like them are 'wrong.' A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different."[21] The Court claims that its decision today merely refuses to recognize a fundamental right to engage in homosexual sodomy; what the Court really has refused to recognize is *the fundamental interest all individuals have in controlling the nature of their intimate associations with others.* (italics supplied)

It has been said that freedom extends beyond spatial bounds.[22] Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.[23] These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the due process clause.[24] At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.[25] Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.[26] ***Lawrence v. Texas***[27] is again instructive:

To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it to be said marriage

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[21] *Wisconsin v. Yoder*, 406 U.S. 205, 223-224, 92 S.Ct. 1526, 1537, 32 L.Ed.2d 15 (1972).

[22] *Lawrence v. Texas*, *supra* note 11.

[23] *Id.*

[24] *Planned Parenthood of Southeastern Pa. v. Casey*, *supra* note 13.

[25] *Id.*

[26] *Id.*

[27] *Supra* note 11.

is simply about the right to have sexual intercourse. The laws involved in *Bowers* and here are, to be sure, statutes that purport to do no more than prohibit a particular sexual act. Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.

This, as a general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution the law protects. *It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice.* (italics supplied)

THIRD. The *ponencia* of Mr. Justice del Castillo refused to characterize homosexuals and bisexuals as a class in themselves for purposes of the equal protection clause. Accordingly, it struck down the assailed Resolutions using the most liberal basis of judicial scrutiny, the rational basis test, according to which government need only show that the challenged classification is rationally related to serving a legitimate state interest.

I humbly submit, however, that a classification based on gender or sexual orientation is a **quasi-suspect classification**, as to trigger a **heightened level of review**.

Preliminarily, in our jurisdiction, the standard and analysis of equal protection challenges in the main have followed the rational basis test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.[28]

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[28] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* 487 Phil. 531, 583 (2004).

However, *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[29] carved out an exception to this general rule, such that prejudice to persons accorded special protection by the Constitution requires stricter judicial scrutiny than mere rationality, *viz.*:

> Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. *The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution. When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, and require a stricter and more exacting adherence to constitutional limitations*. Rational basis should not suffice. (citations omitted and italics supplied)

Considering thus that labor enjoys such special and protected status under our fundamental law, the Court ruled in favor of the Central Bank Employees Association, Inc. in this wise:

> While R.A. No. 7653 started as a valid measure well within the legislature's power, we hold that the enactment of subsequent laws exempting all rank-and-file employees of other GFIs leeched all validity out of the challenged proviso.
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> According to petitioner, the last proviso of Section 15(c), Article II of R.A. No. 7653 is also violative of the equal protection clause because after it was enacted, the charters of the GSIS, LBP, DBP and SSS were also amended, but the personnel of the latter GFIs were all exempted from the coverage of the SSL. Thus, within the class of rank-and-file personnel of GFIs, the BSP rank-and-file are also discriminated upon.
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> Indeed, we take judicial notice that after the new BSP charter was enacted in 1993, Congress also undertook the amendment of the charters of the GSIS, LBP, DBP and SSS, and three other GFIs, from 1995 to 2004, *viz.*:

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[29] *Id*.

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It is noteworthy, as petitioner points out, that the subsequent charters of the seven other GFIs share this common proviso: a blanket exemption of all their employees from the coverage of the SSL, expressly or impliedly...

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The abovementioned subsequent enactments, however, constitute significant changes in circumstance that considerably alter the reasonability of the continued operation of the last proviso of Section 15(c), Article II of Republic Act No. 7653, thereby exposing the proviso to more serious scrutiny. This time, the scrutiny relates to the constitutionality of the classification — albeit made indirectly as a consequence of the passage of eight other laws — between the rank-and-file of the BSP and the seven other GFIs. The classification must not only be reasonable, but must also apply equally to all members of the class. The proviso may be fair on its face and impartial in appearance but it cannot be grossly discriminatory in its operation, so as practically to make unjust distinctions between persons who are without differences.

Stated differently, the second level of inquiry deals with the following questions: Given that Congress chose to exempt other GFIs (aside the BSP) from the coverage of the SSL, can the exclusion of the rank-and-file employees of the BSP stand constitutional scrutiny in the light of the fact that Congress did not exclude the rank-and-file employees of the other GFIs? Is Congress' power to classify so unbridled as to sanction unequal and discriminatory treatment, simply because the inequity manifested itself, not instantly through a single overt act, but gradually and progressively, through seven separate acts of Congress? Is the right to equal protection of the law bounded in time and space that: (a) the right can only be invoked against a classification made directly and deliberately, as opposed to a discrimination that arises indirectly, or as a consequence of several other acts; and (b) is the legal analysis confined to determining the validity within the parameters of the statute or ordinance (where the inclusion or exclusion is articulated), thereby proscribing any evaluation *vis-à-vis* the grouping, or the lack thereof, among several similar enactments made over a period of time?

In this second level of scrutiny, the inequality of treatment cannot be justified on the mere assertion that each exemption (granted to

the seven other GFIs) rests "on a policy determination by the legislature." All legislative enactments necessarily rest on a policy determination — even those that have been declared to contravene the Constitution. Verily, if this could serve as a magic wand to sustain the validity of a statute, then no due process and equal protection challenges would ever prosper. There is nothing inherently sacrosanct in a policy determination made by Congress or by the Executive; it cannot run riot and overrun the ramparts of protection of the Constitution.

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In the case at bar, it is precisely the fact that as regards the exemption from the SSL, there are no characteristics peculiar only to the seven GFIs or their rank-and-file so as to justify the exemption which BSP rank-and-file employees were denied (not to mention the anomaly of the SEC getting one). The distinction made by the law is not only superficial, but also arbitrary. It is not based on substantial distinctions that make real differences between the BSP rank-and-file and the seven other GFIs.

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The disparity of treatment between BSP rank-and-file and the rank-and-file of the other seven GFIs definitely bears the unmistakable badge of invidious discrimination — no one can, with candor and fairness, deny the discriminatory character of the subsequent blanket and total exemption of the seven other GFIs from the SSL when such was withheld from the BSP. Alikes are being treated as unalikes without any rational basis.

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Thus, the two-tier analysis made in the case at bar of the challenged provision, and its conclusion of unconstitutionality by subsequent operation, are in cadence and in consonance with the progressive trend of other jurisdictions and in international law. *There should be no hesitation in using the equal protection clause as a major cutting edge to eliminate every conceivable irrational discrimination in our society. Indeed, the social justice imperatives in the Constitution, coupled with the special status and protection afforded to labor, compel this approach.*

Apropos the special protection afforded to labor under our Constitution and international law, we held in *International School Alliance of Educators v. Quisumbing*:

That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. The Constitution in the Article on Social Justice and Human Rights exhorts Congress to "give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities." The very broad Article 19 of the Civil Code requires every person, "in the exercise of his rights and in the performance of his duties, [to] act with justice, give everyone his due, and observe honesty and good faith."

International law, which springs from general principles of law, likewise proscribes discrimination. General principles of law include principles of equity, *i.e.*, the general principles of fairness and justice, based on the test of what is reasonable. The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation — all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

In the workplace, where the relations between capital and labor are often skewed in favor of capital, inequality and discrimination by the employer are all the more reprehensible.

The Constitution specifically provides that labor is entitled to "humane conditions of work." These conditions are not restricted to the physical workplace — the factory, the office or the field — but include as well the manner by which employers treat their employees.

The Constitution also directs the State to promote "equality of employment opportunities for all." Similarly, the Labor Code provides that the State shall "ensure equal work opportunities regardless of sex, race or creed." It would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes

to unequal and discriminatory terms and conditions of employment.

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Notably, the International Covenant on Economic, Social, and Cultural Rights, in Article 7 thereof, provides:

> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and [favorable] conditions of work, which ensure, in particular:
>
> a. Remuneration which provides all workers, as a minimum, with:
>
> i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

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The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries.

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Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.

But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

In the case at bar, the challenged proviso operates on the basis of the salary grade or officer-employee status. It is akin to a distinction based on economic class and status, with the higher grades as recipients of a benefit specifically withheld from the lower grades. Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank — possessing higher and better education and opportunities for career advancement — are given higher compensation packages to entice them to stay. *Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they — and not the officers — who have the real economic and financial need for the adjustment. This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all." Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster*. (citations omitted and italics supplied)

Corollarily, American case law provides that a state action questioned on equal protection grounds is subject to one of three levels of judicial scrutiny. The level of review, on a sliding scale basis, varies with the type of classification utilized and the nature of the right affected.[30]

If a legislative classification disadvantages a "suspect class" or impinges upon the exercise of a "fundamental right," then the courts will employ strict scrutiny and the statute must fall unless the government can demonstrate that the classification has been precisely tailored to serve a compelling governmental interest.[31] Over the years, the United States Supreme Court has determined that suspect classes for equal protection purposes

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[30] *Pace Membership Warehouse, Div. of K-Mart Corp. v. Axelson*, 938 P.2d 504.

[31] 16B Am. Jur. 2d Constitutional Law § 857, citing *Clark v. Jeter*, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S. Ct. 948, 74 L. Ed. 2d

include classifications based on race, religion, alienage, national origin, and ancestry.[32] The underlying rationale of this theory is that where legislation affects discrete and insular minorities, the presumption of constitutionality fades because traditional political processes may have broken down.[33] In such a case, the State bears a heavy burden of justification, and the government action will be closely scrutinized in light of its asserted purpose.[34]

On the other hand, if the classification, while not facially invidious, nonetheless gives rise to recurring constitutional difficulties, or if a classification disadvantages a "quasi-suspect class," it will be treated under intermediate or heightened review.[35] To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations.[36]

794, 9 Ed. Law Rep. 23 (1983); *Christie v. Coors Transp. Co.*, 933 P.2d 1330 (Colo. 1997); *Baker v. City of Ottumwa*, 560 N.W.2d 578 (Iowa 1997); *Zempel v. Uninsured Employers' Fund*, 282 Mont. 424, 938 P.2d 658 (1997); *Hovland v. City of Grand Forks*, 1997 ND 95, 563 N.W.2d 384 (N.D. 1997).

[32] *Murray v. State of Louisiana*, 2010 WL 334537. See *Burlington N. R.R. Co. v. Ford*, 112 S.Ct. 2184, 2186 (1992) (holding classification based on religion is a suspect classification); *Graham v. Richardson*, 91 S.Ct. 1848, 1852 (1971) (holding classification based on alienage is a suspect classification); *Loving v. Virginia*, 87 S.Ct. 1817, 1823 (1967) (holding classification based on race is a suspect classification); *Oyama v. California*, 68 S.Ct. 269, 274-74 (1948) (holding classification based on national origin is a suspect classification); *Hirabayashi v. U.S.*, 63 S.Ct. 1375 (1943) (holding classification based on ancestry is a suspect classification).

[33] *Johnson v. Robison*, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974).

[34] *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); *Hunter v. Erickson*, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969); *McLaughlin v. State of Fla.*, 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964).

[35] *Supra* note 31.

[36] *United States v. Virginia*, 518 U.S. 515, 533, 116 S.Ct. 2264, 2275, 135 L.Ed.2d 735, 751 (1996).

Noteworthy, and of special interest to us in this case, **quasi-suspect classes include classifications based on gender** or illegitimacy.[37]

If neither strict nor intermediate scrutiny is appropriate, then the statute will be tested for mere rationality.[38] This is a relatively relaxed standard reflecting the Court's awareness that the drawing of lines which creates distinctions is peculiarly a legislative task and an unavoidable one.[39] The presumption is in favor of the classification, of the reasonableness and fairness of state action, and of legitimate grounds of distinction, if any such grounds exist, on which the State acted.[40]

Instead of adopting a rigid formula to determine whether certain legislative classifications warrant more demanding constitutional analysis, the United States Supreme Court has looked to four factors,[41] thus:

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[37] *Murray v. State of Louisiana, supra* note 32. See *Mississippi University for Women v. Hogan*, 102 S.Ct. 3331, 3336 (1982) (holding classifications based on gender calls for heightened standard of review); *Trimble v. Gordon*, 97 S.Ct. 1459, 1463 (1977) (holding illegitimacy is a quasi-suspect classification).

[38] *Supra* note 31.

[39] *Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471, 97 S. Ct. 1898, 52 L. Ed. 2d 513 (1977); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976); *Costner v. U.S.*, 720 F.2d 539 (8th Cir. 1983).

[40] *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996); *Cornerstone Christian Schools v. University Interscholastic League*, 563 F.3d 127, 243 Ed. Law Rep. 609 (5th Cir. 2009); *Independent Charities of America, Inc. v. State of Minn.*, 82 F.3d 791 (8th Cir. 1996); *Bah v. City of Atlanta*, 103 F.3d 964 (11th Cir. 1997).

[41] *Varnum v. Brien*, 763 N.W.2d 862 (2009) citing the following passage from *Plyler v. Doe*, 457 U.S. 202, 216, 102 S.Ct. 2382, 2394, 72 L.Ed.2d 786, 799 (1982):

> Several formulations might explain our treatment of certain classifications as "suspect." Some classifications are more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective. Legislation predicated on such prejudice is easily recognized as incompatible with the constitutional

(1) The history of invidious discrimination against the class burdened by the legislation;[42]

(2) Whether the characteristics that distinguish the class indicate a typical class member's ability to contribute to society;[43]

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understanding that each person is to be judged individually and is entitled to equal justice under the law. Classifications treated as suspect tend to be irrelevant to any proper legislative goal. Finally, certain groups, indeed largely the same groups, have historically been "relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." The experience of our Nation has shown that prejudice may manifest itself in the treatment of some groups. Our response to that experience is reflected in the Equal Protection Clause of the Fourteenth Amendment. Legislation imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control suggests the kind of "class or caste" treatment that the Fourteenth Amendment was designed to abolish.

[42] See *United States v. Virginia*, 518 U.S. at 531-32, 116 S.Ct. at 2274-75, 135 L.Ed.2d at 750 (observing 'long and unfortunate history of sex discrimination" (quoting *Frontiero v. Richardson*, 411 U.S. 677, 684, 93 S.Ct. 1764, 1769, 36 L.Ed.2d 583, 590 (1973) (Brennan, J., plurality opinion))); *Lyng v. Castillo*, 477 U.S. 635, 638, 106 S.Ct. 2727, 2729, 91 L.Ed.2d 527, 533 (1986) (noting subject class had "not been subjected to discrimination"); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 at 443, 105 S.Ct. at 3256, 87 L.Ed.2d at 332 (mentally retarded not victims of "continuing antipathy or prejudice"); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313, 96 S.Ct. 2562, 2567, 49 L.Ed.2d 520, 525 (1976) (considering "history of purposeful unequal treatment" (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28, 93 S.Ct. 1278, 1294, 36 L.Ed.2d 16, 40 (1973))).

[43] See *Cleburne Living Ctr.*, 473 U.S. at 440, 105 S.Ct. at 3254, 87 L.Ed.2d at 320 (certain classifications merely "reflect prejudice and antipathy"); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725, 102 S.Ct. 3331, 3336, 73 L.Ed.2d 1090, 1098 (1982) ("Care must be taken in ascertain-ing whether the statutory objective itself reflects archaic and stereotypic notions."); *Murgia*, 427 U.S. at 313, 96 S.Ct. at 2566, 49 L.Ed.2d at 525 (considering whether aged have "been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities"); *Frontiero*, 411 U.S. at 686, 93 S.Ct. at 1770, 36 L.Ed.2d at 591 (Brennan, J., plurality opinion) ("[T]he sex characteristic frequently bears no relation to ability to perform or contribute to society.").

(3) Whether the distinguishing characteristic is "immutable" or beyond the class members' control;[44] and

(4) The political power of the subject class.[45]

These factors, it must be emphasized, are ***not* constitutive essential elements** of a suspect or quasi-suspect class, as to individually demand a certain weight.[46] The U.S. Supreme Court has applied the four factors in a flexible manner; it has neither required, nor even discussed, every factor in every case.[47] Indeed,

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[44] *Lyng*, 477 U.S. at 638, 106 S.Ct. at 2729, 91 L.Ed.2d at 533 (close relatives "do not exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group"); *Cleburne Living Ctr.*, 473 U.S. at 442, 105 S.Ct. at 3255-56, 87 L.Ed.2d at 322 (mentally retarded people are different from other classes of people, "immutably so, in relevant respects"); *Plyler*, 457 U.S. at 220, 102 S.Ct. at 2396, 72 L.Ed.2d at 801 (children of illegal aliens, unlike their parents, have "legal characteristic[s] over which children can have little control"); *Mathews v. Lucas*, 427 U.S. 495, 505, 96 S.Ct. 2755, 2762, 49 L.Ed.2d 651, 660 (1976) (status of illegitimacy "is, like race or national origin, a characteristic determined by causes not within the control of the illegitimate individual"); *Frontiero*, 411 U.S. at 686, 93 S.Ct. at 1770, 36 L.Ed.2d at 591 (Brennan, J., plurality opinion) ("[S]ex, like race and national origin, is an immutable characteristic determined solely by the accident of birth....").

[45] *Lyng*, 477 U.S. at 638, 106 S.Ct. at 2729, 91 L.Ed.2d at 533 (close relatives of primary household are "not a minority or politically powerless"); *Cleburne Living Ctr.*, 473 U.S. at 445, 105 S.Ct. at 3257, 87 L.Ed.2d at 324 (refusing to find "that the mentally retarded are politically powerless"); *San Antonio Indep. Sch. Dist.*, 411 U.S. at 28, 93 S.Ct. at 1294, 36 L.Ed.2d at 40 (considering whether minority and poor school children were "relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process").

[46] *Varnum v. Brien, supra* note 41; *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 957 A.2d 407 (2008).

[47] *Varnum v. Brien, id.*, citing, among others, *Palmore v. Sidoti*, 466 U.S. 429, 433-34, 104 S.Ct. 1879, 1882-83, 80 L.Ed.2d 421, 426 (1984) (foregoing analysis of political power); *Nyquist v. Mauclet*, 432 U.S. 1, 9 n. 11, 97 S.Ct. 2120, 2125 n. 11, 53 L.Ed.2d 63, 71 n. 11 (1977) (jettisoning immutability requirement and scrutinizing classification of resident aliens closely despite aliens' voluntary status as residents); *Mathews*, 427 U.S. at 505-06, 96 S.Ct.

no single talisman can define those groups likely to be the target of classifications offensive to the equal protection clause and therefore warranting heightened or strict scrutiny; experience, not abstract logic, must be the primary guide.[48]

In any event, the first two factors — history of intentional discrimination and relationship of classifying characteristic to a person's ability to contribute — have always been present when heightened scrutiny has been applied.[49] They have been critical to the analysis and could be considered as prerequisites to concluding a group is a suspect or quasi-suspect class.[50] However, the last two factors — immutability of the characteristic and political powerlessness of the group — are considered simply to supplement the analysis as a means to discern whether a need for heightened scrutiny exists.[51]

Guided by this framework, and considering further that classifications based on sex or gender — albeit on a male/female, man/woman basis — have been previously held to trigger heightened scrutiny, I respectfully submit that classification on the basis of sexual orientation (*i.e.*, homosexuality and/or

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at 2762-63, 49 L.Ed.2d at 660-61 (according heightened scrutiny to classifications based on illegitimacy despite mutability and political power of illegitimates); *Murgia*, 427 U.S. at 313-14, 96 S.Ct. at 2567, 49 L.Ed.2d at 525 (omitting any reference to immutability); *San Antonio Indep. Sch. Dist.*, 411 U.S. at 25, 93 S.Ct. at 1292, 36 L.Ed.2d at 38 (omitting any reference to immutability); *Frontiero*, 411 U.S. at 685-88, 93 S.Ct. at 1770-71, 36 L.Ed.2d at 591-92 (Brennan, J., plurality opinion) (scrutinizing classification based on gender closely despite political power of women); *Graham v. Richardson*, 403 U.S. 365, 371-72, 91 S.Ct. 1848, 1852, 29 L.Ed.2d 534, 541-42 (1971) (foregoing analysis of immutability); see also *Lyng*, 477 U.S. at 638, 106 S.Ct. at 2729, 91 L.Ed.2d at 533 (referring to whether members of the class "exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group").

[48] Concurring and Dissenting Opinion of Mr. Justice Thurgood Marshall in *Cleburne v. Cleburne Living Center, Inc., infra.*

[49] *Varnum v. Brien, supra* note 41.

[50] *Id.*

[51] *Id.*

bisexuality) is a quasi-suspect classification that prompts intermediate review.

The first consideration is whether homosexuals have suffered a history of purposeful unequal treatment because of their sexual orientation.[52] One cannot, in good faith, dispute that gay and lesbian persons historically have been, and continue to be, the target of purposeful and pernicious discrimination due solely to their sexual orientation.[53] Paragraphs 6 and 7 of Ang Ladlad's Petition for Registration for party-list accreditation in fact state:

6. There have been documented cases of discrimination and violence perpetuated against the LGBT Community, among which are:

(a) Effeminate or gay youths being beaten up by their parents and/or guardians to make them conform to standard gender norms of behavior;

(b) Fathers and/or guardians who allow their daughters who are butch lesbians to be raped[, so as] to "cure" them into becoming straight women;

(c) Effeminate gays and butch lesbians are kicked out of school, NGOs, and choirs because of their identity;

(d) Effeminate youths and masculine young women are refused admission from *(sic)* certain schools, are suspended or are automatically put on probation;

(e) Denial of jobs, promotions, trainings and other work benefits once one's sexual orientation and gender identity is *(sic)* revealed;

(f) Consensual partnerships or relationships by gays and lesbians who are already of age, are broken up by their parents or guardians using the [A]nti-kidnapping [L]aw;

(g) Pray-overs, exorcisms, and other religious cures are performed on gays and lesbians to "reform" them;

(h) Young gays and lesbians are forcibly subjected to psychiatric counseling and therapy to cure them[,] despite the de-listing *(sic)* of homosexuality and lesbianism as a mental disorder by the American Psychiatric Association;

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[52] *Id.*; *Kerrigan v. Commissioner of Public Health*, *supra* note 46.

[53] *Kerrigan v. Commissioner of Public Health*, *id.*

(i) Transgenders, or individuals who were born mail (sic) but who self-identity as women and dress as such, are denied entry or services in certain restaurants and establishments; and

(j) Several murders from the years 2003-3006 (sic) were committed against gay men, but were not acknowledged by police as hate crimes or violent acts of bigotry.

7. In the recent May 2009 US asylum case of Philip Belarmino, he testified that as a young gay person in the Philippines, he was subjected to a variety of sexual abuse and violence, including repeated rapes[,] which he could not report to [the] police [or speak of] to his own parents.

Accordingly, this history of discrimination suggests that any legislative burden placed on lesbian and gay people as a class is "more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective."[54]

A second relevant consideration is whether the character-in-issue is related to the person's ability to contribute to society.[55] Heightened scrutiny is applied when the classification bears no relationship to this ability; the existence of this factor indicates the classification is likely based on irrelevant stereotypes and prejudice.[56] Insofar as sexual orientation is concerned, it is gainful to repair to *Kerrigan v. Commissioner of Public Health*,[57] *viz*.:

The defendants also concede that sexual orientation bears no relation to a person's ability to participate in or contribute to society, a fact that many courts have acknowledged, as well. x x x If homosexuals were afflicted with some sort of impediment to their ability to perform and to contribute to society, the entire phenomenon of 'staying in the [c]loset' and of 'coming out' would not exist; their impediment would betray their status. x x x In this critical respect, gay persons stand in stark contrast to other groups that have been denied suspect

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[54] *Varnum v. Brien, supra* note 41.

[55] *Id*.

[56] *Id*.

[57] *Supra* note 46.

or quasi-suspect class recognition, despite a history of discrimination, because the distinguishing characteristics of those groups adversely affect their ability or capacity to perform certain functions or to discharge certain responsibilities in society.[58]

Unlike the characteristics unique to those groups, however, "homosexuality bears no relation at all to [an] individual's ability to contribute fully to society."[59] *Indeed, because an individual's homosexual orientation "implies no impairment in judgment, stability, reliability or general social or vocational capabilities";*[60] *the observation of the United States Supreme Court that race, alienage and national origin -all suspect classes entitled to the highest level of constitutional protection- "are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy"*[61] *is no less applicable to gay persons*. (italics supplied)

Clearly, homosexual orientation is no more relevant to a person's ability to perform and contribute to society than is heterosexual orientation.[62]

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[58] See, *e.g.*, *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. at 442, 105 S.Ct. 3249 (for purposes of federal constitution, mental retardation is not quasi-suspect classification because, *inter alia*, "it is undeniable ... that those who are mentally retarded have a reduced ability to cope with and function in the everyday world"); *Massachusetts Board of Retirement v. Murgia*, 427 U.S. at 315, 96 S.Ct. 2562 (age is not suspect classification because, *inter alia*, "physical ability generally declines with age"); see also *Gregory v. Ashcroft*, 501 U.S. 452, 472, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) ("[i]t is an unfortunate fact of life that physical [capacity] and mental capacity sometimes diminish with age").

[59] L. Tribe, *American Constitutional Law* (2d Ed. 1988) § 16-33, p. 1616.

[60] *Jantz v. Muci*, 759 F.Supp. 1543, 1548 (D.Kan.1991) (quoting 1985 Resolution of the American Psychological Association), 976 F.2d 623 (10th Cir.1992), cert. denied, 508 U.S. 952, 113 S.Ct. 2445, 124 L.Ed.2d 662 (1993).

[61] *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. at 440, 105 S.Ct. 3249.

[62] *Kerrigan v. Commissioner of Public Health*, *supra* note 46.

A third factor that courts have considered in determining whether the members of a class are entitled to heightened protection for equal protection purposes is whether the attribute or characteristic that distinguishes them is immutable or otherwise beyond their control.[63] Of course, the characteristic that distinguishes gay persons from others and qualifies them for recognition as a distinct and discrete group is the characteristic that historically has resulted in their social and legal ostracism, namely, their attraction to persons of the same sex.[64]

Immutability is a factor in determining the appropriate level of scrutiny because the inability of a person to change a characteristic that is used to justify different treatment makes the discrimination violative of the rather "'basic concept of our system that legal burdens should bear some relationship to individual responsibility.'"[65] However, the constitutional relevance of the immutability factor is not reserved to those instances in which the trait defining the burdened class is absolutely impossible to change.[66] That is, the immutability prong of the suspectness inquiry surely is satisfied when the identifying trait is "so central to a person's identity that it would be abhorrent for government to penalize a person for refusing to change [it]."[67]

Prescinding from these premises, it is not appropriate to require a person to repudiate or change his or her sexual orientation in order to avoid discriminatory treatment, because a person's sexual orientation is so integral an aspect of one's identity.[68] Consequently, because sexual orientation "may be altered [if at all] only at the expense of significant damage to the individual's sense of self," classifications based thereon "are no less entitled

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[63] *Id.*

[64] *Id.*

[65] *Varnum v. Brien, supra* note 41.

[66] *Id.*

[67] *Id.* citing *Kerrigan v. Commissioner of Public Health, supra* note 46.

[68] *Id.* citing *In re Marriage Cases*, 183 P.3d at 442.

to consideration as a suspect or quasi-suspect class than any other group that has been deemed to exhibit an immutable characteristic."[69] Stated differently, sexual orientation is not the type of human trait that allows courts to relax their standard of review because the barrier is temporary or susceptible to self-help.[70]

The final factor that bears consideration is whether the group is "a minority or politically powerless."[71] However, the political powerlessness factor of the level-of-scrutiny inquiry does not require a showing of absolute political powerlessness.[72] Rather, the touchstone of the analysis should be "whether the group lacks sufficient political strength to bring a prompt end to the prejudice and discrimination through traditional political means."[73]

Applying this standard, it would not be difficult to conclude that gay persons are entitled to heightened constitutional protection despite some recent political progress.[74] The discrimination that they have suffered has been so pervasive and severe – even though their sexual orientation has no bearing at all on their ability to contribute to or perform in society – that it is highly unlikely that legislative enactments alone will suffice to eliminate that discrimination.[75] Furthermore, insofar as the LGBT community plays a role in the political process, it is apparent that their numbers reflect their status as a small and insular minority.[76]

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[69] *Id.* citing *Kerrigan v. Commissioner of Public Health, supra* note 46.

[70] *Id.*

[71] *Kerrigan v. Commissioner of Public Health, supra* note 46.

[72] *Varnum v. Brien, supra* note 41, citing *Kerrigan v. Commissioner of Public Health, supra* note 46.

[73] *Id.*

[74] *Kerrigan v. Commissioner of Public Health, supra* note 46.

[75] *Id.*

[76] *Id.*

It is therefore respectfully submitted that any state action singling lesbians, gays, bisexuals and trans-genders out for disparate treatment is subject to heightened judicial scrutiny to ensure that it is not the product of historical prejudice and stereotyping.[77]

In this case, the assailed Resolutions of the COMELEC unmistakably fail the intermediate level of review. Regrettably, they betray no more than bigotry and intolerance; they raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected[78] (that is, lesbian, gay, bisexual and trans-gendered individuals). In our constitutional system, status-based classification **undertaken for its own sake** cannot survive.[79]

FOURTH. It has been suggested that the LGBT community cannot participate in the party-list system because it is not a "marginalized and underrepresented sector" enumerated either in the Constitution[80] or Republic Act No. (RA) 7941.[81] However,

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[77] *Id*.

[78] *Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620.

[79] *Id*.

[80] Section 5(2), Article VI of the 1987 Constitution states, in relevant part:

> SECTION 5. x x x x x x x x x
>
> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the *labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector*. (italics supplied)

[81] On the other hand, Section 5 of RA 7941 provides:

> SECTION 5. Registration. — Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national,

this position is belied by our ruling in ***Ang Bagong Bayani-OFW Labor Party v. COMELEC***,[82] where we clearly held that the enumeration of marginalized and underrepresented sectors in RA 7941 is **not exclusive**.

I likewise see no logical or factual obstacle to classifying the members of the LGBT community as marginalized and underrepresented, considering their long history (and indeed, ongoing narrative) of persecution, discrimination, and pathos. **In my humble view, marginalization for purposes of party-list representation encompasses social marginalization as well.** To hold otherwise is tantamount to trivializing socially marginalized groups as "mere passive recipients of the State's benevolence" and denying them the right to "participate directly [in the mainstream of representative democracy] in the enactment of laws designed to benefit them."[83] The party-list system could not have been conceptualized to perpetuate this injustice.

Accordingly, I vote to grant the petition.

SEPARATE OPINION

ABAD, *J.*:

I have to concur only in the result set forth in the well-written *ponencia* of Justice Mariano C. Del Castillo because I arrived at the same conclusion following a different path.

I also felt that the Court needs, in resolving the issues in this case, to say more about what the Constitution and Republic

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regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: *Provided, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.* (italics supplied)

[82] G.R. No. 147589, June 26, 2001, 359 SCRA 698.

[83] *Id.*

Act (R.A.) 7941 intends in the case of the party-list system to abate the aggravations and confusion caused by the alarming overnight proliferation of sectoral parties.

The underlying policy of R.A. 7941 or The Party-List System Act is to give the marginalized and underrepresented sectors of society an opportunity to take a direct part in enacting the laws of the land. In *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections (COMELEC)*,[1] the Court laid down guidelines for accreditation, but these seem to leave the COMELEC like everyone else even more perplexed and dumbfounded about what organizations, clubs, or associations can pass for sectoral parties with a right to claim a seat in the House of Representatives. The Court can, in adjudicating this case, unravel some of the difficulties.

Here, I fully agree that the COMELEC erred when it denied *Ang Ladlad*'s petition for sectoral party accreditation on religious and moral grounds. The COMELEC has never applied these tests on regular candidates for Congress. There is no reason for it to apply them on *Ang Ladlad*. But the *ponencia* already amply and lucidly discussed this point.

What I am more concerned about is COMELEC's claim in its comment on the petition that the *Ang Ladlad* sectoral party was not marginalized and underrepresented since it is not among, or even associated with, the sectors specified in the Constitution and in R.A. 7941.[2] *Ang Ladlad*, it claims, did not qualify as a marginalized and underrepresented group of people like those representing labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals. This is effectively the COMELEC's frame of mind in adjudicating applications for accreditation.

But, the COMELEC's proposition imposes an unwarranted restriction which is inconsistent with the purpose and spirit of

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[1] 412 Phil. 308 (2001).

[2] Comment, pp. 2-6.

the Constitution and the law. A reading of *Ang Bagong Bayani* will show that, based on the Court's reading, neither the Constitution nor R.A. 7941 intends the excessively limited coverage that the COMELEC now suggests. In fact, the Court said in that case that the list in R.A. 7941 is not exclusive. Thus, while the party-list system is not meant for all sectors of society, it was envisioned as a social justice tool for the marginalized and underrepresented in general.

As it happened, the only clue that the Constitution provides respecting the identity of the sectors that will make up the party-list system is found in the examples it gives, namely, the labor, the peasant, the urban poor, the indigenous cultural minorities, the women, and the youth segments of society. Section 5(2), Article VI of the 1987 Constitution provides:

(2) The party-list representative shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector." (Underscoring supplied.)

Getting its bearing from the examples given above, the Congress provided in Section 2 of R.A. 7941 a broad standard for screening and identifying those who may qualify for the party-list system. Thus:

Sec. 2. Declaration of policy. The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards

this end, the State shall develop and guarantee a full, free and open party system or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible. (Underscoring supplied.)

The above speaks of "marginalized and underrepresented sectoral parties or organizations x x x lack well defined political constituencies x x x who could contribute to the formulation and enactment of appropriate legislation." But, as the Court said in *Ang Bagong Bayani*, the whole thing boils down to ascertaining whether the party seeking accreditation belongs to the "marginalized and underrepresented."[3]

Unfortunately, Congress did not provide a definition of the term "marginalized and underrepresented." Nor did the Court dare provide one in its decision in *Ang Bagong Bayani*. It is possible, however, to get a sense of what Congress intended in adopting such term. No doubt, Congress crafted that term—marginalized and underrepresented—from its reading of the concrete examples that the Constitution itself gives of groupings that are entitled to accreditation. These examples are the labor, the peasant, the urban poor, the indigenous cultural minorities, the women, and the youth sectors. Fortunately, quite often ideas are best described by examples of what they are, which was what those who drafted the 1987 Constitution did, rather than by an abstract description of them.

For Congress it was much like looking at a gathering of "a dog, a cat, a horse, an elephant, and a tiger" and concluding that it is a gathering of "animals." Here, it looked at the samples of qualified groups (labor, peasant, urban poor, indigenous cultural minorities, women, and youth) and found a common thread that passes through them all. Congress concluded that these groups belonged to the "marginalized and underrepresented."

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[3] "In the end, the role of the Comelec is to see to it that only those Filipinos who are marginalized and underrepresented become members of Congress under the party-list system, Filipino style." *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, *supra* note 1, at 334.

So what is the meaning of the term "marginalized and underrepresented?" The examples given (labor, peasant, urban poor, indigenous cultural minorities, women, and youth) should be the starting point in any search for definition. Congress has added six others to this list: the fisherfolk, the elderly, the handicapped, the veterans, the overseas workers, and the professionals.[4] Thus, the pertinent portion of Section 5 of R.A. 7941 provides:

Sec. 5. Registration. — x x x Provided, that the sector shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

If one were to analyze these Constitutional and statutory examples of qualified parties, it should be evident that they represent the **working class** (labor, peasant, fisherfolk, overseas workers), the **service class** (professionals), the **economically deprived** (urban poor), the **social outcasts** (indigenous cultural minorities), the **vulnerable** (women, youth) and the **work impaired** (elderly, handicapped, veterans). This analysis provides some understanding of who, in the eyes of Congress, are marginalized and underrepresented.

The parties of the marginalized and underrepresented should be more than just lobby or interest groups. They must have an authentic identity that goes beyond mere similarities in background or circumstances. It is not enough that their members belong to the same industry, speak the same dialect, have a common hobby or sport, or wish to promote public support for their mutual interests. The group should be characterized by a shared advocacy for genuine issues affecting basic human rights as these apply to their groups. This is in keeping with the statutory objective of sharing with them seats in the House of Representatives so they can take part in enacting beneficial legislation.

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[4] Section 5. Registration.—x x x Provided, that the sector shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

It should be borne in mind, however, that both the Constitution and R.A. 7941 merely provide by examples a sense of what the qualified organizations should look like. As the Court acknowledged in *Ang Bagong Bayani*, these examples are not exclusive. For instance, there are groups which are pushed to the margin because they advocate an extremist political ideology, such as the extreme right and the extreme left of the political divide. They may be regarded, if the evidence warrants, as qualified sectors.

Further, to qualify, a party applying for accreditation must represent a narrow rather than a specific definition of the class of people they seek to represent. For example, the Constitution uses the term "labor," a narrower definition than the broad and more abstract term, "working class," without slipping down to the more specific and concrete definition like "carpenters," "security guards," "microchips factory workers," "barbers," "tricycle drivers," and similar sub-groupings in the "labor" group. See the other illustrations below.

Broad Definition	*Narrow Definition	Specifically Defined Groups
Working Class	Labor	Carpenters, security guards, microchip factory workers, barbers, tricycle drivers
Economically Deprived	Urban Poor	Informal settlers, the jobless, persons displaced by domestic wars
The Vulnerable	Women	Working women, battered women,victims of slavery
Work Impaired	Handi-Capped	Deaf and dumb, the blind, people on wheelchairs

***The definition that the Constitution and R.A. 7941 use by their examples.**

Obviously, the level of representation desired by both the Constitution and R.A. 7941 for the party-list system is the second, the narrow definition of the sector that the law regards as

"marginalized and underrepresented." The implication of this is that, if any of the sub-groupings (the carpenters, the security guards, the microchips factory workers, the barbers, the tricycle drivers in the example) within the sector desires to apply for accreditation as a party-list group, it must compete with other sub-groups for the seat allotted to the "labor sector" in the House of Representatives. This is the apparent intent of the Constitution and the law.

An interpretation that will allow concretely or specifically defined groups to seek election as a separate party-list sector by itself will result in riot and redundancy in the mix of sectoral parties grabbing seats in the House of Representatives. It will defeat altogether the objectives of the party-list system. If they can muster enough votes, the country may have a party-list of pedicab drivers and another of tricycle drivers. There will be an irrational apportionment of party-list seats in the legislature.

In addition, Section 5 of R.A. 7941 provides that parties interested in taking part in the party-list system must state if they are to be considered as national, regional, or sectoral parties. Thus:

Sec. 5. Registration. — Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, x x x.

This provision, taken alongside with the territorial character of the sample sectors provided by the Constitution and R.A. 7941, indicates that every sectoral party-list applicant must have an inherently **regional presence** (indigenous cultural minorities) or a **national presence** (all the rest).

The people they represent are not bound up by the territorial borders of provinces, cities, or municipalities. A sectoral group

representing the sugar plantation workers of Negros Occidental, for example, will not qualify because it does not represent the inherently national character of the labor sector.

Finally, as the Court held in *Ang Bagong Bayani*, it is not enough for a party to claim that it represents the marginalized and underrepresented. That is easy to do. The party must factually and truly represent the marginalized and underrepresented. It must present to the COMELEC clear and convincing evidence of its history, authenticity, advocacy, and magnitude of presence. The COMELEC must reject those who put up building props overnight as in the movies to create an illusion of sectoral presence so they can get through the door of Congress without running for a seat in a regular legislative district.

In sum, to qualify for accreditation:

One, the applying party must show that it represents the "marginalized and underrepresented," exemplified by the working class, the service class, the economically deprived, the social outcasts, the vulnerable, the work impaired, or some such similar class of persons.

Two, the applying party should be characterized by a shared advocacy for genuine issues affecting basic human rights as these apply to the sector it represents.

Three, the applying party must share the cause of their sector, narrowly defined as shown above. If such party is a sub-group within that sector, it must compete with other sub-groups for the seat allocated to their sector.

Four, the members of the party seeking accreditation must have an inherent regional or national presence.

And five, except for matters the COMELEC can take judicial notice of, the party applying for accreditation must prove its claims by clear and convincing evidence.

In this case, *Ang Ladlad* represents men and women who identify themselves as lesbians, gays, bisexuals, or trans-gendered persons (LGBTs). Applying the universally accepted estimate

that one out of every 10 persons is an LGBT of a certain kind,[5] the Filipino LGBTs should now stand at about 8.7 million. Despite this, however, they are by and large, subtly if not brutally, excluded from the mainstream, discriminated against, and persecuted. That the COMELEC denied *Ang Ladlad*'s petition on religious and moral grounds is proof of this discrimination.

Ang Ladlad claims that many cases of intolerance and violence against LGBTs have been documented. At home, effeminate or gay youths are subjected to physical abuse by parents or guardians to make them conform to standard gender norms of behavior, while lesbian youths are raped to cure them of their perceived affliction. LGBTs are refused admission from certain schools, or are suspended and put on probation. Meanwhile, in the workplace, they are denied promotions or benefits which are otherwise available to heterosexuals holding the same positions. There is bigotry for their group.

Ang Ladlad has amply proved that it meets the requirements for sectoral party accreditation. Their members are in the vulnerable class like the women and the youth. *Ang Ladlad* represents a narrow definition of its class (LGBTs) rather than a concrete and specific definition of a sub-group within the class (group of gay beauticians, for example). The people that *Ang Ladlad* seeks to represent have a national presence.

The lesbians, gays, bisexuals, and trans-gendered persons in our communities are our brothers, sisters, friends, or colleagues who have suffered in silence all these years. True, the party-list system is not necessarily a tool for advocating tolerance or acceptance of their practices or beliefs. But it does promise them, as a marginalized and underrepresented group, the chance to have a direct involvement in crafting legislations that impact on their lives and existence. It is an opportunity for true and effective representation which is the very essence of our party-list system.

For the above reasons, I vote to **GRANT** the petition.

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[5] http://www.aglbical.org/2STATS.htm.

D I S S E N T I N G O P I N I O N

CORONA, *J.*:

Stripped of the complicated and contentious issues of morality and religion, I believe the basic issue here is simple: does petitioner Ang Ladlad LGBT Party qualify, under the terms of the Constitution and RA 7941, as a marginalized and underrepresented sector in the party-list system?

The relevant facts are likewise relatively uncomplicated. Petitioner seeks accreditation by the respondent Commission on Elections as a political organization of a marginalized and underrepresented sector under the party-list system. Finding that petitioner is not a marginalized sector under RA 7941, the Commission on Elections denied its petition.

A SYSTEM FOR MARGINALIZED AND UNDERREPRESENTED SECTORS

The party-list system is an innovation of the 1987 Constitution. It is essentially a tool for the advancement of social justice with the fundamental purpose of affording opportunity to marginalized and underrepresented sectors to participate in the shaping of public policy and the crafting of national laws. It is premised on the proposition that the advancement of the interests of the marginalized sectors contributes to the advancement of the common good and of our nation's democratic ideals.

But who are the marginalized and underrepresented sectors for whom the party-list system was designed?

THE TEXTS OF THE CONSTITUTION AND OF RA[1] 7941

The resolution of a constitutional issue primarily requires that the text of the fundamental law be consulted. Section 5(2), Article VI of the Constitution directs the course of our present inquiry. It provides:

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[1] Republic Act.

SEC. 5. x x x

(2) The party-list representatives shall constitute twenty per centum of the total number of Representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election **from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector**. (emphasis supplied)

The Constitution left the matter of determining the groups or sectors that may qualify as "marginalized" to the hands of Congress. Pursuant to this constitutional mandate, RA 7941 or the Party-List System Act was enacted in 1995. The law provides:

Section 2. *Declaration of policy*. — The State shall **promote proportional representation** in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens **belonging to marginalized and under-represented sectors, organizations and parties**, and **who lack well-defined political constituencies** but **who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole**, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.

x x x x x x x x x

Section 5. *Registration.* — Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: *Provided*, That **the sectors shall include labor,**

peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

The COMELEC shall publish the petition in at least two (2) national newspapers of general circulation.

The COMELEC shall, after due notice and hearing, resolve the petition within fifteen (15) days from the date it was submitted for decision but in no case not later than sixty (60) days before election.

Section 6. *Refusal and/or Cancellation of Registration.* — The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association, organized for religious purposes;

(2) It advocates violence or unlawful means to seek its goal;

(3) It is a foreign party or organization;

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. (emphasis supplied)

THE COURT'S PREVIOUS PRONOUNCEMENTS

As the oracle of the Constitution, this Court divined the intent of the party-list system and defined its meaning in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*:[2]

[2] 412 Phil. 308 (2001).

That political parties may participate in the party-list elections does not mean, however, that *any* political party — or any organization or group for that matter -- may do so. The requisite character of these parties or organizations must be consistent with the purpose of the party-list system, as laid down in the Constitution and RA 7941. x x x

The Marginalized and Underrepresented to Become Lawmakers Themselves

[Section 2 of RA 7941] mandates a state policy of promoting proportional representation by means of the Filipino-style party-list system, which will "enable" the election to the House of Representatives of Filipino citizens,

1. who belong to marginalized and underrepresented sectors, organizations and parties; and
2. who lack well-defined constituencies; but
3. who could contribute to the formulation and enactment of appropriate legislation that will **benefit the nation as a whole**.

The key words in this policy are "proportional representation," "marginalized and underrepresented," and "lack [of] well-defined constituencies."

"Proportional representation" here does not refer to the number of people in a particular district, because the party-list election is national in scope. Neither does it allude to numerical strength in a distressed or oppressed group. Rather, **it refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration in Section 5 of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."**

However, it is not enough for the candidate to claim representation of the marginalized and underrepresented, because representation is easy to claim and to feign**. The party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies mentioned in Section 5**. Concurrently, the persons nominated by the party-list candidate-organization must be "Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties."

Finally, "lack of well-defined constituenc[y]" refers to the absence of a traditionally identifiable electoral group, like voters of a congressional district or territorial unit of government. Rather, it points again to those with disparate interests identified with the "marginalized or underrepresented."

In the end, the role of the Comelec is to see to it that only those Filipinos who are "marginalized and underrepresented" become members of Congress under the party-list system, Filipino-style.

The intent of the Constitution is clear: to give genuine power to the people, not only by giving more law to those who have less in life, but more so by enabling them to become veritable lawmakers themselves. Consistent with this intent, the policy of the implementing law, we repeat, is likewise clear: "to enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, x x x, to become members of the House of Representatives." Where the language of the law is clear, it must be applied according to its express terms.

The marginalized and underrepresented sectors to be represented under the party-list system are enumerated in Section 5 of RA 7941, which states:

> "SEC. 5. *Registration*. — Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: *Provided*, that the sector shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."

While the enumeration of marginalized and underrepresented sectors is not exclusive, it demonstrates the clear intent of the law that not all sectors can be represented under the party-list system. It is a fundamental principle of statutory construction that words employed in a statute are interpreted in connection with, and

their meaning is ascertained by reference to, the words and the phrases with which they are associated or related. Thus, the meaning of a term in a statute may be limited, qualified or specialized by those in immediate association.

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Indeed, the law crafted to address the peculiar disadvantages of Payatas hovel dwellers cannot be appropriated by the mansion owners of Forbes Park. The interests of these two sectors are manifestly disparate; hence, the OSG's position to treat them similarly defies reason and common sense. In contrast, and with admirable candor, Atty. Lorna Patajo-Kapunan admitted during the Oral Argument that a group of bankers, industrialists and sugar planters could not join the party-list system as representatives of their respective sectors.

While the business moguls and the mega-rich are, numerically speaking, a tiny minority, they are neither marginalized nor underrepresented, for the stark reality is that their economic clout engenders political power more awesome than their numerical limitation. Traditionally, political power does not necessarily emanate from the size of one's constituency; indeed, it is likely to arise more directly from the number and amount of one's bank accounts.

It is ironic, therefore, that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted — to give them not only genuine hope, but genuine power; to give them the opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct voice in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, **it invites those marginalized and underrepresented in the past — the farm hands, the fisher folk, the urban poor, even those in the underground movement — to come out and participate**, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling and desecrating this social justice vehicle.

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Verily, **allowing the non-marginalized and overrepresented to vie for the remaining seats under the party-list system would not only *dilute,* but also *prejudice* the chance of the marginalized**

and underrepresented, contrary to the intention of the law to *enhance* it. The party-list system is a tool for the benefit of the underprivileged; the law could not have given the same tool to others, to the prejudice of the intended beneficiaries.

This Court, therefore, cannot allow the party-list system to be sullied and prostituted by those who are neither marginalized nor underrepresented. It cannot let that flicker of hope be snuffed out. The clear state policy must permeate every discussion of the qualification of political parties and other organizations under the party-list system. (emphasis and underscoring supplied)

Hence, in *Ang Bagong Bayani-OFW Labor Party*, the Court stressed that the party-list system is reserved only for those sectors marginalized and underrepresented **in the past** (*e.g.*, labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, professionals and even those in the underground movement who wish to come out and participate). They are those sectors **traditionally and historically marginalized** and deprived of an opportunity to participate in the formulation of national policy although **their sectoral interests are also traditionally and historically regarded as vital to the national interest**. That is why Section 2 of RA 7941 speaks of "marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that **will benefit the nation as a whole**."

How should the matter of whether a particular sectoral interest is vital to national interest (and therefore beneficial to the nation as a whole) be determined? Chief Justice Reynato S. Puno's opinion[3] in *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*[4] offers valuable insight:

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[3] The Chief Justice's stance is the official stance of the Court on the matter because majority of the members of the Court sided with him on the issue of disallowing major political parties from participating in the party-list elections, directly or indirectly.

[4] G.R. No. 179271, 21 April 2009, 586 SCRA 210, 258-259.

… Similarly, limiting the party-list system to the marginalized and excluding the major political parties from participating in the election of their representatives is aligned with the constitutional mandate to "reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good"; the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making; the right of women to opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation; the right of labor to participate in policy and decision-making processes affecting their rights and benefits in keeping with its role as a primary social economic force; the right of teachers to professional advancement; the rights of indigenous cultural communities to the consideration of their cultures, traditions and institutions in the formulation of national plans and policies, and the indispensable role of the private sector in the national economy.

As such, the interests of marginalized sectors are by tradition and history vital to national interest and therefore beneficial to the nation as a whole because the Constitution declares a national policy recognizing the role of these sectors in the nation's life. In other words, the concept of marginalized and underrepresented sectors under the party-list scheme has been carefully refined by concrete examples involving sectors deemed to be significant in our legal tradition. They are essentially sectors with a constitutional bond, that is, specific sectors subject of specific provisions in the Constitution, namely, labor,[5] peasant,[6] urban poor,[7] indigenous cultural communities,[8] women,[9] youth,[10] veterans,[11] fisherfolk,[12]

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[5] Section 18, Article II; Section 3, Article XIII.

[6] Section 21, Article II; Section 4, Article XIII.

[7] Section 9, Article II; Section 10, Article XIII.

[8] Section 22, Article II; Section 5, Article XII.

[9] Section 14, Article II; Section 14, Article XIII.

[10] Section 13, Article II; Section 3(2), Article XV.

[11] Section 7, Article XVI.

[12] Paragraph three of Section 2, Article XII, Section 7, Article XIII.

elderly,[13] handicapped,[14] overseas workers[15] and professionals.[16]

The premise is that the advancement of the interests of these important yet traditionally and historically marginalized sectors promotes the national interest. The Filipino people as a whole are benefited by the empowerment of these sectors.

The long-muffled voices of marginalized sectors must be heard because their respective interests are intimately and indispensably woven into the fabric of the national democratic agenda. The social, economic and political aspects of discrimination and marginalization should not be divorced from the role of a particular sector or group in the advancement of the collective goals of Philippine society as a whole. In other words, marginalized sectors should be given a say in governance through the party-list system, not simply because they desire to say something constructive but because they deserve to be heard on account of their traditionally and historically decisive role in Philippine society.

A UNIFYING THREAD

Fidelity to the Constitution requires commitment to its text. Thus, in the exercise of its function as official interpreter of the Constitution, the Court should always bear in mind that judicial prudence means that it is safer to construe the Constitution from what appears upon its face.[17]

With regard to the matter of what qualifies as marginalized and underrepresented sectors under the party-list system, Section 5(2), Article VI of the Constitution mentions "the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the

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[13] Section 11, Article XIII.

[14] Sections 11 and 13, Article XIII.

[15] Section 18, Article II; Section 3, Article XIII.

[16] Section 14, Article XII.

[17] *Civil Liberties Union v. Executive Secretary*, G.R. No.83896, 22 February 1991, 194 SCRA 317, 337.

religious sector." On the other hand, the law speaks of "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."[18]

Surely, the enumeration of sectors considered as marginalized and underrepresented in the fundamental law and in the implementing law (RA 7941) cannot be without significance. To ignore them is to disregard the texts of the Constitution and of RA 7941. For, indeed, the very first of *Ang Bagong Bayani-OFW Labor Party*'s eight guidelines for screening party-list participants is this: the parties, sectors or organizations "must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941."[19]

For this reason, I submit the majority's decision is cryptic and wanting when it makes short shrift of the issue of whether petitioner is a marginalized and underrepresented sector in the following manner:

> The crucial element is not whether a sector is specifically enumerated, but whether a particular organization complies with the requirements of the Constitution and RA 7941.

The resolution of petitions for accreditation in the party-list system on a case-to-case basis not tethered to the enumeration of the Constitution and of RA 7941 invites the exercise of unbridled discretion. Unless firmly anchored on the fundamental law and the implementing statute, the party-list system will be a ship floating aimlessly in the ocean of uncertainty, easily tossed by sudden waves of flux and tipped by shifting winds of change in societal attitudes towards certain groups. Surely, the Constitution and RA 7941 did not envision such kind of a system.

Indeed, the significance of the enumeration in Section 5(2), Article VI of the Constitution and Section 5 of RA 7941 is clearly explained in *Ang Bagong Bayani-OFW Labor Party*:

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[18] See proviso of the first paragraph of Section 5, RA 7941.

[19] *Supra* note 2 at 342.

"Proportional representation" here does not refer to the number of people in a particular district, because the party-list election is national in scope. Neither does it allude to numerical strength in a distressed or oppressed group. Rather, **it refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration in Section 5 of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."**

However, it is not enough for the candidate to claim representation of the marginalized and underrepresented, because representation is easy to claim and to feign**. The party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies mentioned in Section 5**. Concurrently, the persons nominated by the party-list candidate-organization must be "Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties."

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While the enumeration of marginalized and underrepresented sectors is not exclusive, it demonstrates the clear intent of the law that not all sectors can be represented under the party-list system. It is a fundamental principle of statutory construction that words employed in a statute are interpreted in connection with, and

their meaning is ascertained by reference to, the words and the phrases with which they are associated or related. Thus, **the meaning of a term in a statute may be limited, qualified or specialized by those in immediate association**.[20] (emphasis and underscoring supplied)

More importantly, in defining the concept of a "sectoral party," Section 3(d) of RA 7941 limits "marginalized and underrepresented sectors" and expressly refers to the list in Section 5 thereof:

Section 3. *Definition of Terms*. — x x x

(d) A sectoral party refers to an organized group of citizens **belonging to any of the sectors enumerated in Section 5 hereof** whose principal advocacy pertains to the special interest and concerns of their sector, x x x. (emphasis supplied)

Petitioner does not question the constitutionality of Sections 2, 3(d) and 5 of RA 7941. (Its charges of violation of non-establishment of religion, equal protection, free speech and free association are all leveled at the assailed resolutions of the Commission on Elections.) Thus, petitioner admits and accepts that its case must rise or fall based on the aforementioned provisions of RA 7941.

Following the texts of the Constitution and of RA 7941, and in accordance with established rules of statutory construction and the Court's pronouncement in *Ang Bagong Bayani-OFW Labor Party*, the meaning of "marginalized sectors" under the party list system is **limited and qualified**. Hence, other sectors that may qualify as marginalized and underrepresented should have a **close connection** to the sectors mentioned in the Constitution and in the law. In other words, the marginalized and underrepresented sectors qualified to participate in the party-list system refer only to the labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, professionals and **other related or similar sectors**.

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[20] *Supra* note 2.

This interpretation is faithful to and deeply rooted in the language of the fundamental law and of its implementing statute. It is coherent with the mandate of the Constitution that marginalized sectors qualified to participate in the party-list system but not mentioned in Section 5(2), Article VI are **"such other sectors as may be provided by law" duly enacted by Congress**. It is also consistent with the basic canon of statutory construction, *ejusdem generis*, which requires that a general word or phrase that follows an enumeration of particular and specific words of the same class, the general word or phrase should be construed to include, or to be restricted to persons, things or cases, akin to, resembling, or of the same kind or class as those specifically mentioned.[21] Moreover, it reins in the subjective elements of passion and prejudice that accompany discussions of issues with moral or religious implications as it avoids the need for complex balancing and undue policy-making.

What is the unifying thread that runs through the marginalized and underrepresented sectors under the party-list system? What are the family resemblances that would characterize them?[22]

Based on the language of the Constitution and of RA 7941 and considering the pronouncements of this Court in *Ang Bagong Bayani-OFW Labor Party* and *BANAT*, the following factors are significant:

(a) they must be among, or closely connected with or similar to, the sectors mentioned in Section 5 of RA 7941;

(b) they must be sectors whose interests are traditionally and historically regarded as vital to the national interest but they have long been relegated to the fringes of society and deprived of an opportunity to participate in the formulation of national policy;

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[21] *Miranda v. Abaya*, 370 Phil. 642, 658 (1999).

[22] The notion of family resemblances (*familienähnlichkeit*) was introduced by the leading analytic philosopher, Ludwig Wittgenstein, in his book Philosophical Investigations. As used in this opinion, however, family resemblances specifically refer to the DNA, the basic component unit, that identifies a sector as a member of the family of marginalized and underrepresented sectors enumerated in Section 5(2), Article VI of the Constitution and Section 5 of RA 7941.

(c) the vinculum that will establish the close connection with or similarity of sectors to those expressly mentioned in Section 5 of RA 7941 is a constitutional provision specifically recognizing the special significance of the said sectors (other than people's organizations, unless such people's organizations represent sectors mentioned in Section 5 of RA 7941)[23] to the advancement of the national interest and

(d) while lacking in well-defined political constituencies, they must have regional or national presence to ensure that their interests and agenda will be beneficial not only to their respective sectors but, more importantly, to the nation as a whole.

FOR PURPOSES OF THE PARTY-LIST SYSTEM, PETITIONER IS NOT A MARGINALIZED SECTOR

In this case, petitioner asserts that it is entitled to accreditation as a marginalized and underrepresented sector under the party-list system. However, the Commission on Elections disagrees.

The majority reverses the Commission on Elections. While it focuses on the contentious issues of morality, religion, equal protection, and freedom of expression and association, by granting the petition, the majority effectively rules that petitioner is a qualified marginalized and underrepresented sector, thereby allowing its accreditation and participation in the party-list system.

I disagree.

Even assuming that petitioner was able to show that the community of lesbians, gays, bisexuals and transsexuals (LGBT) is underrepresented, it cannot be properly considered as

[23] The reason behind this exception is obvious. If all people's organizations are automatically considered as marginalized and underrepresented, then no sector or organization may be disqualified on the grounds of non-marginalization and lack of underrepresentation. The Court's guidelines in *Ang Bagong Bayani-OFW Labor Party* would have been unnecessary after all and, worse, the constitutional requirement that the sectors qualified to participate in the party-list system be determined by law would have been merely superfluous and pointless.

marginalized under the party-list system. *First*, petitioner is not included in the sectors mentioned in Section 5(2), Article VI of the Constitution and Section 5 of RA 7941. Unless an overly strained interpretation is resorted to, the LGBT sector cannot establish a close connection to any of the said sectors. Indeed, petitioner does not even try to show its link to any of the said sectors. Rather, it represents itself as an altogether distinct sector with its own peculiar interests and agenda.

Second, petitioner's interest as a sector, which is basically the legal recognition of its members' sexual orientation as a right, cannot be reasonably considered as an interest that is traditionally and historically considered as vital to national interest. At best, petitioner may cite an emergent awareness of the implications of sexual orientation on the national human rights agenda. However, an emergent awareness is but a confirmation of lack of traditional and historical recognition.[24] Moreover, even the majority admits that there is **no** "clear cut consensus favorable to gay rights claims."[25]

Third, petitioner is cut off from the common constitutional thread that runs through the marginalized and underrepresented sectors under the party-list system. It lacks the vinculum, a constitutional bond, a provision in the fundamental law that specifically recognizes the LGBT sector as specially significant to the national interest. This standard, implied in *BANAT*, is required to create the necessary link of a particular sector to those sectors expressly mentioned in Section 5(2), Article VI of the Constitution and Section 5 of RA 7941.

Finally, considering our history and tradition as a people, to consider the promotion of the LGBT agenda and "gay rights" as a national policy as beneficial to the nation as a whole is debatable at best. Even the majority (aside from extensively invoking foreign practice and international conventions rather than Philippine laws) states:

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[24] *Lawrence v. Texas*, 539 U.S. 558 (2003), (Scalia, J., dissenting).

[25] Decision, p. 23.

We do not suggest that public opinion, even at its most liberal, reflect a clear cut strong consensus favorable to gay rights claims….[26]

This is so unlike the significance of the interests of the sectors in Section 5 of RA 7941 which are, without doubt, indisputable.

Regardless of the personal beliefs and biases of its individual members, this Court can only apply and interpret the Constitution and the laws. Its power is not to create policy but to recognize, review or reverse the policy crafted by the political departments if and when a proper case is brought before it. Otherwise, it will tread on the dangerous grounds of judicial legislation.

In this instance, Congress, in the exercise of its authority under Section 5(2), Article VI of the Constitution, enacted RA 7941. Sections 2, 3(d) and (5) of the said law instituted a policy when it enumerated certain sectors as qualified marginalized and underrepresented sectors under the party-list system. Respect for that policy and fidelity to the Court's duty in our scheme of government require us to declare that only sectors expressly mentioned or closely related to those sectors mentioned in Section 5 of RA 7941 are qualified to participate in the party-list system. That is the tenor of the Court's rulings in *Ang Bagong Bayani-OFW Labor Party* and *BANAT*. As there is no strong reason for the Court to rule otherwise, *stare decisis* compels a similar conclusion in this case.

The Court is called upon to exercise judicial restraint in this case by strictly adhering to, rather than expanding, legislative policy on the matter of marginalized sectors as expressed in the enumeration in Section 5 of RA 7941. The Court has no power to amend and expand Sections 2, 3(d) and 5 of RA 7941 in the guise of interpretation. The Constitution expressly and exclusively vests the authority to determine "such other [marginalized] sectors" qualified to participate in the party-list system to Congress. Thus, until and unless Congress amends the law to include the LGBT and other sectors in the party-list system, deference to Congress' determination on the matter is proper.

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[26] *Id*.

A FINAL WORD

To be succinctly clear about it, I do not say that there is no truth to petitioner's claim of discriminatory and oppressive acts against its members. I am in no position to make that claim. Nor do I claim that petitioner has no right to speak, to assemble or to access our political departments, particularly the legislature, to promote the interests of its constituency. Social perceptions of sexual and other moral issues may change over time, and every group has the right to persuade its fellow citizens that its view of such matters is the best.[27] But persuading one's fellow citizens is one thing and insisting on a right to participate in the party-list system is something else. Considering the facts, the law and jurisprudence, petitioner cannot properly insist on its entitlement to use the party-list system as a vehicle for advancing its social and political agenda.

While bigotry, social stereotyping and other forms of discrimination must be given no place in a truly just, democratic and libertarian society, the party-list system has a well-defined purpose. The party-list system was not designed as a tool to advocate tolerance and acceptance of any and all socially misunderstood sectors. Rather, it is a platform for the realization of the aspirations of marginalized sectors whose interests are, by nature and history, also the nation's but which interests have not been sufficiently brought to public attention because of these sectors' underrepresentation.

Congress was given by the Constitution full discretion to determine what sectors may qualify as marginalized and underrepresented. The Court's task is to respect that legislative determination by strictly adhering to it. If we effectively and unduly expand such congressional determination, we will be dabbling in policy-making, an act of political will and not of judicial judgment.

Accordingly, I respectfully vote to dismiss the petition.

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[27] *Lawrence v. Texas*, supra note 29 (J. Scalia, dissenting).

SECOND DIVISION

[G.R. No. 180542. April 12, 2010]

HUBERT NUÑEZ, *petitioner, vs.* **SLTEAS PHOENIX SOLUTIONS, INC., through its representative, CESAR SYLIANTENG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; FALLS WITHIN THE ORIGINAL EXCLUSIVE JURISDICTION OF THE FIRST LEVEL COURTS.— Designed to provide an expeditious means of protecting actual possession or the right to possession of the property involved, there can be no gainsaying the fact that ejectment cases fall within the original and exclusive jurisdiction of first level courts by express provision of Section 33 of ***Batas Pambansa Blg.* 129,** in relation to Sec. 1, Rule 70 of the 1997 Rules of Civil Procedure. In addition to being conferred by law, however, a court's jurisdiction over the subject matter is determined by the allegations of the complaint and the character of the relief sought, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims asserted therein. In much the same way that it cannot be made to depend on the exclusive characterization of the case by one of the parties, jurisdiction cannot be made to depend upon the defenses set up in the answer, in a motion to dismiss or in a motion for reconsideration.

2. ID.; ID.; FORCIBLE ENTRY; REQUISITES.— The rule is no different in actions for forcible entry where the following requisites are essential for the MeTC's acquisition of jurisdiction over the case, *viz.*: (a) the plaintiffs must allege their prior physical possession of the property; (b) they must assert that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and, (c) the action must be filed within one (1) year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property. As it is not essential that the complaint should expressly employ the language of the law, it is considered a sufficient compliance of the requirement where the facts are set up showing that dispossession took place under said

conditions. The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land, except that when the entry is through stealth, the one-year period is counted from the time the plaintiff learned thereof.

3. ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR; ALLEGATIONS IN THE COMPLAINT, WHEN SUFFICIENT.— Even prescinding from the fact that the parties had admitted the MeTC's jurisdiction, our perusal of the record shows that respondent's 9 January 2004 amended complaint was able to make out a cause of action for forcible entry against petitioner. As the registered owner of the subject parcel, respondent distinctly alleged that, by its representatives and thru its predecessors-in-interest, it had been in possession of the subject parcel and had exercised over the same all attributes of ownership, including the payment of realty taxes and other expenses; that an ocular inspection conducted in October 2003 revealed that petitioner and his co-defendants have succeeded in occupying the property by means of stealth and strategy; and, that its subsequent demands to vacate had been unheeded by said interlopers. Considering that the test for determining the sufficiency of the allegations in the complaint is whether, admitting the facts alleged, the court can render a valid judgment in accordance with the prayer of the plaintiff, we find that the Court of Appeals correctly ruled that the MeTC had jurisdiction over the case.

4. ID.; ID.; ID.; ID.; PRIOR PHYSICAL POSSESSION IS AN INDISPENSABLE REQUIREMENT; ONE NEED NOT HAVE ACTUAL OR PHYSICAL OCCUPATION OF EVERY SQUARE INCH OF THE PROPERTY AT ALL TIMES TO BE CONSIDERED IN POSSESSION.— While prior physical possession is, admittedly, an indispensable requirement in forcible entry cases, the dearth of merit in petitioner's position is, however, evident from the principle that possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Because possession can also be acquired by juridical acts to which the law gives the force of acts of possession, *e.g.*, donations, succession, execution and registration of public instruments, inscription of possessory information titles and

the like, it has been held that one need not have actual or physical occupation of every square inch of the property at all times to be considered in possession.

5. ID.; ID.; ID.; ID.; ONE YEAR PERIOD IS COUNTED FROM THE TIME THE PLAINTIFF ACQUIRED KNOWLEDGE OF THE DISPOSSESSION WHEN THE SAME HAD BEEN EFFECTED BY MEANS OF STEALTH.— In this case, the subject parcel was acquired by respondent by virtue of the 4 June 1999 Deed of Assignment executed in its favor by the Spouses Ong Tiko and Emerenciana Sylianteng. Although it did not immediately put the same to active use, respondent appears to have additionally caused the property to be registered in its name as of 27 February 2002 and to have paid the real property taxes due thereon alongside the sundry expenses incidental thereto. Viewed in the light of the foregoing juridical acts, it consequently did not matter that, by the time respondent conducted its ocular inspection in October 2003, petitioner had already been occupying the land since 1999. Ordinarily reckoned from the date of actual entry on the land, the one year period is counted from the time the plaintiff acquired knowledge of the dispossession when, as here, the same had been effected by means of stealth.

6. ID.; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT WILL NOT BE CONSIDERED BY A REVIEWING COURT.— Petitioner had, of course, endeavored to establish that respondent's predecessors-in-interest had served him a demand to vacate the subject parcel as early as 31 July 1996. Correctly brushed aside by the Court of Appeals on the ground, among others, that respondent had no participation in its preparation, we find said demand letter of little or no use to petitioner's cause in view of its non-presentation before the MeTC. However, much as it may now be expedient for petitioner to anchor his cause thereon, said demand letter was first introduced in the record only as an attachment to his reply to respondent's comment to the motion for reconsideration of the 14 July 2005 order issued by the RTC. The rule is settled, however, that points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot

be raised for the first time on appeal. Basic consideration of due process impels this rule.

7. ID.; EVIDENCE; BURDEN OF PROOF; THE PLAINTIFF HAS THE BURDEN OF PROVING THE MATERIAL ALLEGATIONS OF THE COMPLAINT WHICH ARE DENIED BY THE DEFENDANT, AND THE DEFENDANT HAS THE BURDEN OF PROVING THE MATERIAL ALLEGATIONS IN HIS CASE WHERE HE SETS UP A NEW MATTER.— A similar dearth of merit may be said of the exceptions petitioner continues to take against the MeTC's reliance on the survey plan prepared by Geodetic Engineer Joseph Padilla to the effect that that the premises occupied by petitioner lies within the metes and bounds of respondent's property. As mere allegation is not evidence, the rule is settled that plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant, and the defendant has the burden of proving the material allegations in his case where he sets up a new matter. Given the parties' failure to make good on their agreement to cause a survey of the property thru an impartial surveyor from the Office of the City Assessor or City Engineer, respondent's submission of said report was evidently for the purpose discharging the onus of proving petitioner's encroachment on the subject parcel, as alleged in the complaint. As the party asserting the contrary proposition, petitioner cannot expediently disparage the admissibility and probative value of said survey plan to compensate for his failure to prove his own assertions.

8. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; THE DEFENDANT'S MERE ASSERTION OF HIS LESSOR'S TITLE OVER THE SUBJECT PROPERTY WILL NOT OUST THE METC OF ITS SUMMARY JURISDICTION OVER THE EJECTMENT CASE.— Petitioner is, finally, out on a limb in faulting the Court of Appeals with failure to apply the first paragraph of Article 1676 of the Civil Code of the Philippines in relation to the lease he claims to have concluded with one Maria Ysabel Potenciano Padilla Sylianteng. In the absence of proof of his lessor's title or respondent's prior knowledge of said contract of lease, petitioner's harping over the same provision simply amounts to an implied admission that the premises occupied by him lie within the metes and bounds of the subject parcel. Even then, the resolution of said

issue is clearly inappropriate since ejectment cases are summary actions intended to provide an expeditious manner for protecting possession or right to possession without involvement of title. Moreover, if a defendant's mere assertion of ownership in an ejectment case will not oust the MeTC of its summary jurisdiction, we fail to see why it should be any different in this case where petitioner merely alleged his lessor's supposed title over the subject parcel.

APPEARANCES OF COUNSEL

Gregorio D. David for petitioner.
N.A. Aranzaso & Associates for respondent.

D E C I S I O N

PEREZ, *J.*:

The determination of the jurisdiction of first level courts over ejectment cases is at the heart of this Petition for Review on *Certiorari* filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure, which seeks the nullification and setting aside of the 31 July 2007 Decision rendered by the Special Twelfth Division of the Court of Appeals in CA-G.R. SP No. 91771.[1]

The Facts

The subject matter of the instant suit is a 635.50 square meter parcel of land situated at *Calle* Solana, Intramuros, Manila and registered in the name of respondent SLTEAS Phoenix Solutions, Inc. under Transfer Certificate of Title (TCT) No. 87556 of the Manila City Registry of Deeds. Despite having acquired the same thru the 4 June 1999 Deed of Assignment executed in its favor by the Spouses Ong Tiko and Emerenciana Sylianteng,[2] it appears that respondent was constrained to leave the subject parcel idle and unguarded for some time due to important business concerns. In October 2003, an ocular

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[1] *Rollo*, pp. 61-73.

[2] Records, p. 10a.

inspection conducted by respondent's representatives revealed that the property was already occupied by petitioner Hubert Nuñez and 21 other individuals.[3] Initially faulting one Vivencia Fidel with unjustified refusal to heed its verbal demands to vacate the subject parcel, respondent filed its 5 December 2003 complaint for forcible entry which was docketed as Civil Case No. 177060 before Branch 4 of the Metropolitan Trial Court (MeTC) of Manila.[4]

Additionally impleading petitioner and the rest of the occupants of the property, respondent filed its 9 January 2004 amended complaint, alleging, among other matters, that thru its representatives and predecessors-in-interest, it had continuously possessed the subject realty, over which it exercised all attributes of ownership, including payment of real property taxes and other sundry expenses; that without the benefit of any lease agreement or possessory right, however, petitioners and his co-defendants have succeeded in occupying the property by means of strategy and stealth; and, that according to reliable sources, the latter had been in occupancy of the same parcel since 1999. Together with the ejectment of the occupants of the subject premises, respondent prayed for the grant of its claims for reasonable rentals, attorney's fees, litigation expenses and the costs.[5]

Specifically denying the material allegations of the foregoing amended complaint in his 14 February 2004 Answer, petitioner averred that the property occupied by him is owned by one Maria Ysabel Potenciano Padilla Sylianteng, with whom he had concluded a subsisting lease agreement over the same, and that, in addition to respondent's lack of cause of action against him,

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[3] Vivencia Fidel, Maximo Mahipus, Jr., Hermigildo Mangubat, Epifanio Casolita II, Erlinda Inciong, Edgar Amador, Joseph Duerme, Rolando Jamang, Romeo Granada, Romeo Figueroa, Brando Galciso, Eunice Banaag, Cecilia Agonos, Beth De Guzman, Mario P. Tampol, Elizabeth Francisco, Edmundo R. Barela, Reynaldo Granada, Zedric Bananag, Estanislao J. La Fuente and Danilo P. Jerusalem.

[4] Records, pp. 15-20.

[5] *Rollo*, pp. 24-30.

the MeTC had no jurisdiction over the case for lack of prior demand to vacate and referral of the controversy to the *barangay* authorities for a possible amicable settlement.[6] Likewise questioning the MeTC's jurisdiction over the case, the rest of the defendants filed a Motion to Dismiss[7] which they adopted as their answer subsequent to its 27 February 2004 denial upon the finding that a sufficient cause of action can be gleaned from the allegations of the complaint.[8]

After an ocular inspection conducted on 9 June 2004, it appears that the MeTC concluded that the crowding of the residential units on the subject parcel rendered the determination of its exact metes and bounds impossible.[9] Unable to present his lessor's title, petitioner also appears to have agreed to the use of TCT No. 87556 as basis for determining the exact measurement of respondent's property.[10] With the parties' further failure to abide by their agreement to cause a survey of the property thru an impartial surveyor from the Office of the City Assessor or City Engineer, the record shows that respondent submitted a survey plan prepared by Geodetic Engineer Joseph Padilla who determined that petitioner was, indeed, occupying a portion of the subject parcel.[11] Relying on said report, the MeTC went on to render a Decision dated 23 November 2004,[12] resolving the complaint in the following wise:

> Wherefore, premises considered, judgment is hereby rendered in favor of the plaintiff and against all the defendants and ordering the latter to:
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> 1. vacate the subject premises located at Lot 11, Block 45, Solana St., Intramuros, Manila;

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[6] *Id.* at 31-34.

[7] Records, pp. 59-64.

[8] *Id.* at 58.

[9] *Id.* at 76-77.

[10] *Id.* at 145.

[11] *Id.* at 128.

[12] *Rollo,* pp. 37-43.

2. for each [defendant], to pay Php5,000.00 a month counted from October 2003 until defendants vacate the subject property;

3. to pay Php15,000.00 as and for attorney's fees; and

4. to pay the costs of suit.[13]

On appeal, the foregoing decision was affirmed *in toto* in the 14 July 2005 Order issued by the Regional Trial Court (RTC) of Manila in Civil Case No. 05-112490.[14] Dissatisfied with said Order, petitioner elevated the case to the Court of Appeals by way of a petition for review filed pursuant to Section 1, Rule 42 of the 1997 Rules of Civil Procedure.[15] Finding that the allegations in respondent's amended complaint sufficiently made out a cause of action for forcible entry against petitioner, the Court of Appeals rendered the herein assailed decision, dismissing said petition for review upon the following findings and conclusions:

> Parenthetically, although the dispossession took place more than one year from the illegal entry of petitioner and his co-defendants, knowledge of the same was only acquired by petitioner in 2003 when the ocular inspection was made. While ordinarily, the one-year prescriptive period should be reckoned from the date of the actual entry on the land, the same however, does not hold true when entry was made through stealth, in which case, the one year period is counted from the time the plaintiff learned thereof.
>
> Neither may petitioner seek refuge in the alleged demand letter dated 31 July 1996 sent by respondent's counsel which sought his ouster from the subject premises. Not only was the existence of this letter immaterial to the issue of illegal entry into the subject premises but the same cannot bind respondent who has no participation therein. Moreover, it also bears stressing that not once did petitioner refute the lack of knowledge on the part of respondent of the alleged lease contract and their usurpation of the disputed property. Verily, granting that a lease contract truly existed, respondent's lack of

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[13] *Id.* at 43.

[14] *Id.* at 44-50.

[15] *Id.* at 15-21.

knowledge of the lease contract and the failure to register the same in the Register of Deeds cannot bind third parties like respondent and therefore, withhold respondent's right to institute the action for ejectment.

As to the identity of the premises occupied by petitioner Nuñez, We find that the RTC committed no reversible error in admitting the evidence of respondent which consists of the plan prepared by Geodetic Engineer Padilla. Suffice it to state that petitioner, during the proceedings below, agreed to secure an impartial survey from the Assessor's Office or the Office of the City Engineer. However, when he took no action after failing to obtain the survey from said offices, his consequent failure to secure, on his own, the services of an impartial surveyor to determine and rebut respondent's allegation, he did so on his own accord and had no other person but himself to blame.[16]

The Issues

Upon receipt of the Court of Appeals' 4 November 2007 Resolution denying his motion for reconsideration of the aforequoted decision,[17] petitioner filed the petition at bench on the following grounds:

I

THE COURTS HAVE NO JURISDICTION TO TRY THE INSTANT CASE CONSIDERING THAT THE ELEMENTS OF FORCIBLE ENTRY ARE NOT PRESENT AND ADDITIONALLY THERE IS A QUESTION OF OWNERSHIP.

II

THE PETITIONER SHOULD NOT VACATE THE LEASED PREMISES CONSIDERING THAT THERE IS AN EXISTING LEASE CONTRACT WITH THE OWNER WHICH IS IN VIOLATION OF THE PROVISION OF ARTICLE 1671 OF THE NEW CIVIL CODE.[18]

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[16] *Id.* at 70-71.

[17] *Id.* at 79-80.

[18] *Id.* at 9.

The Court's Ruling

We find the petition bereft of merit.

Designed to provide an expeditious means of protecting actual possession or the right to possession of the property involved,[19] there can be no gainsaying the fact that ejectment cases fall within the original and exclusive jurisdiction of first level courts[20] by express provision of Section 33 of ***Batas Pambansa Blg.* 129**, in relation to Sec. 1, Rule 70 of the 1997 Rules of Civil Procedure.[21] In addition to being conferred by law,[22] however, a court's jurisdiction over the subject matter is determined by the allegations of the complaint[23] and the character of the relief sought,[24] irrespective of whether or not the plaintiff is entitled to recover all or some of the claims asserted therein.[25] In much the same way that it cannot be made to depend on the exclusive characterization of the case by one of the parties,[26] jurisdiction

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[19] *Tubiano v. Razo*, 390 Phil. 863, 868 (2000).

[20] *Corpuz v. Court of Appeals*, G.R. No. 117005, 19 June 1997, 274 SCRA 275, 279.

[21] Section 1. ***Who may institute proceedings, and when.* —** Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of a contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person may at anytime within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[22] *Deltaventures Resources, Inc. v. Cabato*, 384 Phil. 252, 259-260 (2000).

[23] *Gochan v. Young***,** 406 Phil. 663, 673-674 (2001).

[24] *Sunny Motor Sales, Inc. v. Court of Appeals*, 415 Phil. 517, 520 (2001).

[25] *Ty v. Court of Appeals*, 408 Phil. 793, 798 (2001).

[26] *Pilipinas Bank v. Court of Appeals*, 383 Phil. 18, 28 (2000).

cannot be made to depend upon the defenses set up in the answer, in a motion to dismiss or in a motion for reconsideration.[27]

The rule is no different in actions for forcible entry where the following requisites are essential for the MeTC's acquisition of jurisdiction over the case, *viz.*: (a) the plaintiffs must allege their prior physical possession of the property; (b) they must assert that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and, (c) the action must be filed within one (1) year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.[28] As it is not essential that the complaint should expressly employ the language of the law, it is considered a sufficient compliance of the requirement where the facts are set up showing that dispossession took place under said conditions.[29] The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land, except that when the entry is through stealth, the one-year period is counted from the time the plaintiff learned thereof.[30]

Even prescinding from the fact that the parties had admitted the MeTC's jurisdiction,[31] our perusal of the record shows that respondent's 9 January 2004 amended complaint was able to make out a cause of action for forcible entry against petitioner. As the registered owner of the subject parcel, respondent distinctly alleged that, by its representatives and thru its predecessors-in-interest, it had been in possession of the subject parcel and had exercised over the same all attributes of ownership, including the payment of realty taxes and other expenses; that an ocular inspection conducted in October 2003 revealed that petitioner

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[27] *Tamano v. Ortiz*, 353 Phil. 775, 780 (1998).

[28] *De La Cruz v. Court of Appeals*, G.R. No. 139442, 6 December 2006, 510 SCRA 103, 115.

[29] *Cajayon v. Sps. Batuyong*, G.R. No. 149118, 16 February 2006, 482 SCRA 461, 471-472.

[30] *Ong v. Parel*, 407 Phil. 1045, 1053 (2001).

[31] Records, pp. 94 and 145.

and his co-defendants have succeeded in occupying the property by means of stealth and strategy; and, that its subsequent demands to vacate had been unheeded by said interlopers.[32] Considering that the test for determining the sufficiency of the allegations in the complaint is whether, admitting the facts alleged, the court can render a valid judgment in accordance with the prayer of the plaintiff,[33] we find that the Court of Appeals correctly ruled that the MeTC had jurisdiction over the case.

Then as now, petitioner argues that, aside from the admission in the complaint that the subject parcel was left idle and unguarded, respondent's claim of prior possession is clearly negated by the fact that he had been in occupancy thereof since 1999. While prior physical possession is, admittedly, an indispensable requirement in forcible entry cases, the dearth of merit in petitioner's position is, however, evident from the principle that possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right.[34] Because possession can also be acquired by juridical acts to which the law gives the force of acts of possession, *e.g*., donations, succession, execution and registration of public instruments, inscription of possessory information titles and the like, it has been held that one need not have actual or physical occupation of every square inch of the property at all times to be considered in possession.[35]

In this case, the subject parcel was acquired by respondent by virtue of the 4 June 1999 Deed of Assignment executed in its favor by the Spouses Ong Tiko and Emerenciana Sylianteng. Although it did not immediately put the same to active use, respondent appears to have additionally caused the property to

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[32] *Rollo,* pp. 25-28.

[33] *Heirs of Demetrio Melchor v. Melchor,* 461 Phil. 437, 443-444 (2003).

[34] *Habagat Grill v. DMC-Urban Property Developer, Inc.,* 494 Phil. 603, 619 (2005).

[35] *Quizon v. Juan,* G.R. No. 171442, 17 June 2008, 554 SCRA 601, 612.

be registered in its name as of 27 February 2002[36] and to have paid the real property taxes due thereon[37] alongside the sundry expenses incidental thereto. Viewed in the light of the foregoing juridical acts, it consequently did not matter that, by the time respondent conducted its ocular inspection in October 2003, petitioner had already been occupying the land since 1999. Ordinarily reckoned from the date of actual entry on the land, the one year period is counted from the time the plaintiff acquired knowledge of the dispossession when, as here, the same had been effected by means of stealth.[38]

Petitioner had, of course, endeavored to establish that respondent's predecessors-in-interest had served him a demand to vacate the subject parcel as early as 31 July 1996.[39] Correctly brushed aside by the Court of Appeals on the ground, among others, that respondent had no participation in its preparation, we find said demand letter of little or no use to petitioner's cause in view of its non-presentation before the MeTC. However, much as it may now be expedient for petitioner to anchor his cause thereon, said demand letter was first introduced in the record only as an attachment to his reply to respondent's comment to the motion for reconsideration of the 14 July 2005 order issued by the RTC.[40] The rule is settled, however, that points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.[41] Basic consideration of due process impels this rule.[42]

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[36] Records, p. 21.

[37] *Id.* at 86.

[38] *Ong v. Parel, supra* note 30.

[39] *Rollo*, pp. 18 and 59.

[40] Records, pp. 310-314.

[41] *Almocera v. Ong*, G.R. No. 170479, 18 February 2008, 546 SCRA 164, 178.

[42] *Magaling v. Ong*, G.R. No. 173333, 13 August 2008, 562 SCRA 152, 170-171.

A similar dearth of merit may be said of the exceptions petitioner continues to take against the MeTC's reliance on the survey plan prepared by Geodetic Engineer Joseph Padilla to the effect that the premises occupied by petitioner lies within the metes and bounds of respondent's property. As mere allegation is not evidence,[43] the rule is settled that plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant, and the defendant has the burden of proving the material allegations in his case where he sets up a new matter.[44] Given the parties' failure to make good on their agreement to cause a survey of the property thru an impartial surveyor from the Office of the City Assessor or City Engineer, respondent's submission of said report was evidently for the purpose discharging the onus of proving petitioner's encroachment on the subject parcel, as alleged in the complaint. As the party asserting the contrary proposition, petitioner cannot expediently disparage the admissibility and probative value of said survey plan to compensate for his failure to prove his own assertions.

Petitioner is, finally, out on a limb in faulting the Court of Appeals with failure to apply the first paragraph of Article 1676 of the Civil Code of the Philippines[45] in relation to the lease he claims to have concluded with one Maria Ysabel Potenciano Padilla Sylianteng. In the absence of proof of his lessor's title or respondent's prior knowledge of said contract of lease, petitioner's harping over the same provision simply amounts to an implied admission that the premises occupied by him lie within the metes and bounds of the subject parcel. Even then, the resolution of said issue is clearly inappropriate since ejectment cases are summary actions intended to provide an expeditious manner for protecting possession or right to possession without

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[43] *Gateway Electronics Corporation v. Asianbank Corporation,* G.R. No. 172041, 18 December 2008, 574 SCRA 698, 718-719.

[44] *Republic v. Vda. De Neri,* 468 Phil. 842, 862 (2004).

[45] Art. 1676. The purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease.

involvement of title.[46] Moreover, if a defendant's mere assertion of ownership in an ejectment case will not oust the MeTC of its summary jurisdiction,[47] we fail to see why it should be any different in this case where petitioner merely alleged his lessor's supposed title over the subject parcel.

WHEREFORE, the petition is *DENIED* for lack of merit.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Mendoza,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 184179. April 12, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JULIAN PAJES *y* OPONDA and MIGUEL PAGHUNASAN *y* URBANO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; ONE OF THE WEAKEST DEFENSES BUT IT DOES NOT RELIEVE THE PROSECUTION OF ITS RESPONSIBILITY TO ESTABLISH THE IDENTITY OF THE OFFENDER BY THE

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[46] *Cayabyab v. Gomez de Aquino,* G.R. No.159974, 5 September 2007, 532 SCRA 353, 361.

[47] *Tecson v. Gutierrez,* 493 Phil. 132, 138 (2005).

[*] Per Special Order No. 832, Associate Justice Jose Catral Mendoza is hereby designated as Additional Member of the Second Division in place of Associate Justice Roberto A. Abad, who is on Official Leave from April 6-8, 2010.

SAME QUANTUM OF EVIDENCE REQUIRED FOR PROVING THE CRIME ITSELF.— It is a well-settled principle in law that the defense of alibi is one of the weakest defenses available to an accused in a criminal case. As it may easily be concocted, alibis are invariably viewed with suspicion, and, as a general rule, crumbles in light of positive identification of the offender by truthful witnesses. Conversely however, this Court has, in more than one occasion, held that the defense of alibi may acquire commensurate strength where the witnesses have made no positive and proper identification of the offender. This is because the inherent weakness of alibi as a defense does not operate to relieve the prosecution of its responsibility to establish the identity of the offender by the same quantum of evidence required for proving the crime itself.

2. ID.; ID.; CREDIBILITY OF WITNESSES; IDENTIFICATION OF ACCUSED; KNOWLEDGE OF A PERSON'S NAME IS NOT NECESSARY FOR PROPER IDENTIFICATION.— [T]here is nothing irregular about the fact that Mrs. Cesar was not able to give the name of her kidnappers at the time she executed her *Sinumpaang Salaysay*. On the contrary, it is quite normal for a kidnap victim to be ignorant of the names of her abductors. Frequent use by kidnappers of *aliases*, like the ones in the case at bar, makes it extremely difficult for a kidnap victim to know their real names. Be that as it may, knowledge of a person's name is not necessary for proper identification. Mrs. Cesar may not know the names of her abductors, but she was nevertheless familiar with their physical features and was, thus, able to describe them quite extensively in her *Sinumpaang Salaysay*. Hence, it is perfectly logical that Mrs. Cesar was only able to identify appellant Paghunasan upon seeing him in person during the police line-up.

3. ID.; ID.; ID.; PERFECT SYMMETRY BETWEEN THE TESTIMONIES OF THE WITNESSES, WHILE DESIRABLE, IS NOT ABSOLUTELY REQUIRED FOR THEM TO BE DEEMED CREDIBLE.— [T]here is actually no conflict between the testimonies of Mr. Cesar and PO3 Ceferino Gatchalian. xxx [M]r. Cesar never testified that Paghunasan was alone at the Capas cemetery during the pay-off. All that Mr. Cesar stated was that a man, whom he later identified as appellant Paghunasan, alighted from a motorcycle and approached him and PO3 Ceferino Gatchalian. Mr. Cesar

was silent as to the number of persons boarding the motorcycle from which Paghunasan alighted. Verily, the statements of Mr. Cesar cannot be said to contradict the testimony of PO3 Ceferino Gatchalian who merely clarified that Paghunasan alighted from a motorcycle boarded by two other persons. Significantly, Mr. Cesar and PO3 Ceferino Gatchalian uniformly attested to the more material fact that it was only appellant Paghunasan who alighted from the motorcycle and who approached them to receive the ransom money. To the mind of this Court, this is enough to make their identification of appellant Paghunasan worthy of belief. Indeed, perfect symmetry between the testimonies of the witnesses, while desirable, is not absolutely required for them to be deemed credible. To be deserving of belief, it is enough that the testimonies of the witnesses concur on material points.

4. ID.; ID.; ID.; ID.; FAILURE OF THE WITNESS TO IDENTIFY ACCUSED FROM THE PICTURES SHOWN TO HER, NOT FATAL.— [T]he failure of Erlinda to identify appellant Paghunasan from the pictures shown to her during the time she executed her *Sinumpaang Salaysay* is not fatal to the integrity of her subsequent open court identification. In response to this issue, we hereby quote with approval a portion of the decision of the Court of Appeals, to wit: Not even Erlinda [Santos'] failure to identify the accused-appellants when confronted by their pictures would render the prosecution's case weak. **She was able to explain the apparent difference between the picture shown her and the physical features of Paghunasan in person. But she was categorical in identifying Paghunasan as one of the persons who entered the kitchen on 31 January 2002. We do not doubt her ability to remember with precision considering that she herself testified that a gun was poked at her, that her knees were trembling out of fear, and that she just stayed in the kitchen, put her face down on the table as her employer shouted for help.**

5. ID.; ID.; ALIBI; MUST FAIL WHERE THE ACCUSED FAILED TO PROVE PHYSICAL IMPOSSIBILITY TO BE AT THE *LOCUS CRIMINIS* AT THE TIME OF THE COMMISSION OF THE OFFENSE.— His positive identification intact, appellant Paghunasan is left with only his alibi to fend off the serious accusations against him. Without any other evidence

proving that it was physically impossible for him to be at the *locus criminis* on 31 January 2002, appellant Paghunasan's alibi must necessarily fail.

6. ID.; ID.; CONSPIRACY; WHEN EXISTS.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. When a crime is committed under a conspiracy, the liability of all conspirators becomes collective regardless of the extent of their actual participation in the crime. In other words, the act of one becomes the act of all.

7. ID.; ID.; ID.; DIRECT PROOF OF A PREVIOUS AGREEMENT TO COMMIT A CRIME IS NOT NECESSARY.— In determining the existence of conspiracy, direct proof of a previous agreement to commit a crime is not necessary. After all, conspiracy may be inferred from the mode and manner by which the offense is perpetrated or from the very acts of the accused themselves. To support a finding of conspiracy, what is merely required is an unmistakable showing that the collective acts of the accused before, during and after the commission of a felony were all aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments. In the case at bar, the facility and efficiency by which the abduction of Mrs. Cesar was effected was an undeniable proof of the existence of a pre-conceived plan under which the kidnappers were acting. From their entry to the NC Farms by the ingenious use of pretension, to the groups' systematic scouring of Mrs. Cesar's office, and up to their cinematic escape—the acts of the kidnappers were knitted seamlessly together in a web of a single criminal design.

8. ID.; ID.; ID.; PRESENT IN CASE AT BAR.— The aggregate participation of appellant Pajes shows that he was part of the criminal conspiracy to kidnap Mrs. Cesar. Indeed, if appellant Pajes was as innocent as he claims to be, he could have easily avoided going back to the *nipa* hut upon his descent from the mountains to the town proper of Capas, Tarlac. But instead, he did just the opposite. Pajes returned to the *nipa* hut and fulfilled the criminal purpose of the kidnappers. While he

was not among those who actually raided NC Farms, his subsequent contribution to the victim's continuing detention more than speaks of his concurrence and involvement to the kidnappers' criminal design.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

PEREZ, *J.*:

This is before this Court by way of an ordinary Appeal[1] from the Decision[2] dated 14 April 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00555. In the said decision, the appellate court affirmed the conviction of appellants Miguel Paghunasan (Paghunasan) and Julian Pajes (Pajes), for the crime of Kidnapping for Ransom under Article 267 of the Revised Penal Code,[3] and meted upon them the penalty of *reclusion perpetua*. The dispositive portion of the assailed decision reads:

WHEREFORE, in view of the foregoing, the appealed *Decision* is **AFFIRMED** with **MODIFICATION** in that accused-appellants Julian Pajes ("Mario"/Pajes) and Miguel Paghunasan ("Yoyoy"/"Yoy"/"Iyoy"/Paghunasan) are hereby sentenced to suffer the penalty of *reclusion perpetua*. They are also jointly and solidarily ORDERED to pay ₱130,000.00 to Amelita Yang Cesar as indemnity for the amount taken from her office, and moral damages in the amount of Php50,000.00.[4]

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[1] *Via* a notice of appeal, pursuant to Section 3(c) of Rule 122 of the Rules of Court.

[2] Penned by Associate Justice Romeo F. Barza with Associate Justices Mario L. Guariña III and Japar B. Dimaampao, concurring. *Rollo*, pp. 2-29.

[3] Act No. 3185, as amended.

[4] *Rollo,* pp. 27-28.

In view of the gravity of the penalty imposed and in order to minimize, if not eradicate, the possibility of error, this Court saw it fit to revisit the records of this case and re-examine the facts as found by the trial court and the Court of Appeals. Our review brings us to the following facts:

Private complainant Amelita Yang Cesar (Mrs. Cesar) is the manager of the NC Farms in Pulung Cacutud, Angeles City.[5] Around 4:30 in the afternoon of 31 January 2002, Mrs. Cesar was at her office preparing the payroll of her employees when a man posing as a buyer of chicken, rang the doorbell of the farm.[6] Unsuspecting of any danger, Mrs. Cesar instructed one of her workers to sell a chicken to the buyer standing outside of the farm's main gate.[7]

As soon as the chicken was handed, the buyer pushed the gate and, immediately, five (5) armed men forced their way inside the farm's premises.[8] The *poseur*-buyer, who goes by the *alias* "Yoyoy,"[9] turned out to be part of a group of malefactors set to rob NC Farms and to kidnap Mrs. Cesar.

Mrs. Cesar was able to witness the violent entry of the malefactors from the two-way mirror of her office and quickly rushed to lock its door.[10] But before Mrs. Cesar could do so, Yoyoy was able to kick the door and the group of armed men barged into the office of Mrs. Cesar.[11] Once inside, the leader of the group, a man named Serio Panday, pointed a gun at the right temple of Mrs. Cesar and forced her to surrender the farm's payroll money.[12] All in all, Serio Panday was able to

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[5] TSN, 3 October 2002, p. 5.

[6] *Id.* at 7. *See* also TSN, 14 November 2002, p. 6.

[7] TSN, 14 November 2002, p. 7.

[8] *Id.* at 10.

[9] Also referred to as "Yoy" or "Iyoy" in some parts of the records.

[10] TSN, 14 November 2002, p. 12.

[11] *Id.*

[12] TSN, 3 October 2002, pp. 8-10.

extort roughly One Hundred Thirty Thousand Pesos (₱130,000.00) in cash from Mrs. Cesar.[13]

Meanwhile, the other malefactors stormed the kitchen, where Erlinda Santos (Erlinda), a cook of Mrs. Cesar, was staying.[14] The sight of armed men left Erlinda stunned with fear.[15] One of the intruders told Erlinda, "*Hold-up ito, tumahimik ka para walang mangyari sa iyo*."[16] The intruders then scoured the place and proceeded upstairs in search of other occupants.[17]

After ransacking the office and before making their escape, Serio Panday directed his cohorts to bring Mrs. Cesar along with them.[18] Against her will, Mrs. Cesar was made to board her own delivery van which the group decided to use as their getaway vehicle.[19] She was placed at the back of the van where three armed men, including Yoyoy, guarded her.[20] Two other members of the group occupied the front passenger seats, while another one drove the van.[21]

After driving for a while, the group stopped along the base of a mountain in Capas, Tarlac, to pick up a certain Ponggay Ventura who would guide the group to a *nipa* hut — a safehouse at the top of the mountain.[22] The group also picked up a certain

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[13] *Id.* at 10-11.

[14] TSN, 2 December 2002, pp. 4-9.

[15] *Id.* at 15.

[16] *Id.* at 11. *See* also Exhibit "B", Folder of Exhibits.

[17] *Id.* at 9-18.

[18] TSN, 3 October 2002, p. 12.

[19] *Id.* at 12-13.

[20] *Id.* at 13-14. The other two men guarding Mrs. Cesar at the back of the delivery van was a man known only as *alias* "Boy," and another man sporting a hair dyed with different colors but whose name or *alias* Mrs. Cesar could no longer remember.

[21] *Id.* at 14-15.

[22] *Id.* at 16-17.

"Mario" to drive the van to their destination, replacing the group's former driver.[23]

Prior to reaching the *nipa* hut, however, the cellular phone of Mrs. Cesar rang.[24] The phone of Mrs. Cesar was then in the possession of one of the kidnappers by the name of "Brad," who answered[25] and demanded from the caller, who happened to be Mrs. Cesar's brother-in-law, Fifty Million Pesos (₱50,000,000.00) in exchange for the release of Mrs. Cesar.[26]

Upon reaching the top of the mountain at about 6:00 in the evening, Mrs. Cesar was led by her abductors inside the *nipa* hut.[27] From the inside looking out, Mrs. Cesar saw, and met, for the first time Mario who introduced himself as the driver of the group.[28] Shortly afterwards, Mario was ordered by Serio Panday to dispose of the delivery van by driving it all the way down from the mountain to the town proper of Capas, Tarlac.[29] Mario would later on return to the mountain around 9:00 that evening, after leaving the van somewhere in *Barangay* Dolores, Capas, Tarlac.[30]

Aside from Mario, Mrs. Cesar also saw two new faces outside the *nipa* hut—one of which was of a man, while another was of a woman with long hair.[31] Mrs. Cesar also noticed a red pick-up truck parked about five hundred (500) meters away from the *nipa* hut.[32]

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[23] TSN, 6 November 2003, pp. 6-7.

[24] TSN, 3 October 2002, pp. 16-17.

[25] *Id.* at 16.

[26] *Id.* at 17.

[27] *Id*.

[28] *Id.* at 34.

[29] *Id.* at 19. *See* also TSN, 6 November 2003, pp. 9-10.

[30] TSN, 6 November 2003, p. 10.

[31] TSN, 3 October 2002, pp. 18-19.

[32] *Id.* at 17.

Later that night, Yoyoy told Mrs. Cesar to call her husband, Christopher Cesar (Mr. Cesar).[33] Upon making contact, Yoyoy reiterated Brad's earlier demand of Fifty Million Pesos (₱50,000,000.00) for the release of Mrs. Cesar.[34] When Mr. Cesar refused to pay because the amount asked was too much for his means, Yoyoy became irritated and hung up.[35] Mrs. Cesar spent the rest of the night inside the *nipa* hut guarded by appellant Yoyoy.[36]

The next morning, Yoyoy resumed negotiations with Mr. Cesar.[37] Following a consultation with his fellow kidnappers, Yoyoy finally conceded to a ransom of Eight Hundred Thousand Pesos (₱800,000.00) proposed by Mr. Cesar.[38] Yoyoy then informed Mr. Cesar that the pay-off would be at the Capas cemetery at 7:00 that evening.[39]

Mario accompanied Mrs. Cesar to the Capas cemetery for the agreed pay-off.[40] The other kidnappers, including Yoyoy, arrived earlier and were already scattered throughout the cemetery.[41] Later, Mr. Cesar arrived with his driver, and they were approached by Yoyoy who had alighted from a motorcycle.[42] Upon securing from Mr. Cesar the ransom money, Yoyoy signaled Mario to release Mrs. Cesar.[43] Yoyoy then rode off on a motorcycle, while Mario left the cemetery alone.[44]

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[33] *Id.* at 22.

[34] *Id.* at 23.

[35] *Id.* at 23-24.

[36] *Id.* at 27.

[37] *Id.* at 30-31.

[38] *Id.* at 36-38.

[39] *Id.* at 39.

[40] *Id.* at 40.

[41] *Id. See* also TSN, 6 November 2003, p. 18.

[42] TSN, 6 November 2003, p. 19.

[43] *Id.* at 20.

[44] *Id.*

What followed was a hot pursuit operation supervised by the National Anti-Kidnapping Task Force (NAKTAF).[45] Unknown to the kidnappers, Mr. Cesar coordinated with the NAKTAF prior to the pay-off.[46] In fact, the driver who was with Mr. Cesar at the Capas cemetery is actually PO3 Ceferino Gatchalian, an undercover agent of the NAKTAF.[47]

The hot pursuit operations led to the apprehensions of herein appellants Pajes[48] and Paghunasan.[49] Also arrested were one Rustico Pamintuan and one Luz Gonzales, who were the owners of the red pick-up truck parked outside of the *nipa* hut where Mrs. Cesar was detained.[50]

On 17 May 2002, both of the appellants, along with Rustico Pamintuan, Luz Gonzales as well as the other persons[51] alleged to be involved in the abduction of Mrs. Cesar, were charged of Kidnapping for Ransom penalized under Article 267[52] of the

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[45] TSN, 24 March 2003, p. 12.

[46] *Id.* at 5.

[47] *Id.*

[48] *Id.* at 13.

[49] *Id.* at 7.

[50] TSN, 30 June 2003, pp. 7-9.

[51] The other accused still at large are Serio Panday, More Panday, Ponggay Ventura, Antonio Caponpon, Joe Caponpon, *alias* Boy, *alias* Bay and *alias* Brad.

[52] Article 267 of the Revised Penal Code provides:

> **Article 267**. *Kidnapping and serious illegal detention.*— Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
> 2. If it shall have been committed simulating public authority.
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

Revised Penal Code.[53] The accusatory portion of the Information[54] reads:

That on or about 4:30 o' clock in the afternoon of January 31, 2002 in the Municipality of Capas, Province of Tarlac and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully kidnapped and detain Amelita Yang Cesar in a *Nipa* Hut at *Barangay* Aranguren, Capas, Tarlac who was released on February 01, 2002 in exchange of ransom in the amount of ₱800,000.00.

Considering that the other accused remain at large, only the appellants, Rustico Pamintuan and Luz Gonzales were arraigned and were able to enter a plea of not guilty. For them, trial thereafter ensued.

During the trial, Mrs. Cesar positively identified appellant Paghunasan as the very same "Yoyoy" who acted as a *poseur*-buyer at NC Farms; who kicked the door of her office to enable his armed companions to enter; who negotiated with Mr. Cesar for her release in exchange for a ransom of Eight Hundred Thousand Pesos (₱800,000.00); and who was among those responsible for her abduction and subsequent detention in the *nipa* hut at the top of the mountain.

Erlinda, Mr. Cesar and PO3 Ceferino Gatchalian corroborated the identification made by Mrs. Cesar. Erlinda pointed to appellant Paghunasan as one of the armed men who entered the office

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The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense. (Underscoring supplied).

[53] Appellant Miguel Paghunasan, Serio Panday, More Panday, *alias* Boy, *alias* Bay, and *alias* Brad were also charged under two other informations—one charging them of Robbery with Violence and Intimidation Against Persons, and another one charging them, along with appellant Julian Pajes, for violation of Republic Act No. 6359 or the Anti-Carnapping Law. In both charges, appellant Miguel Paghunasan was convicted. Appellant Julian Pajes, however, was acquitted of the carnapping charges. (*See* CA *rollo*, pp. 130-144).

[54] Records, pp. 1-2.

kitchen of NC Farms. Mr. Cesar and PO3 Gatchalian, on the other hand, testified that it was appellant Paghunasan who approached them in the Capas cemetery, and who received the ransom money for the release of Mrs. Cesar.

Likewise positively identified in the course of the trial was appellant Pajes. Mrs. Cesar testified that appellant Pajes is the same "Mario" who acted as the driver for her kidnappers, who was among those who guarded her in the *nipa* hut, and who accompanied her to the Capas cemetery for the pay-off.

After the prosecution rested its case, accused Rustico Pamintuan and Luz Gonzales filed a motion to dismiss by way of a demurrer to the evidence. In an Order[55] dated 28 October 2003, the Regional Trial Court of Capas, Tarlac, Branch 66, granted the demurrer to the evidence, effectively resulting into the acquittal of Rustico Pamintuan and Luz Gonzales.

The appellants, on the other hand, would have a different fate. In the Decision[56] dated 16 September 2004 of the trial court, the appellants were found guilty beyond reasonable doubt of Kidnapping for Ransom and were meted the ultimate penalty of death. The decretal portion of the ruling reads:

> WHEREFORE, finding **Miguel Paghunasan *y* Urbano @ Yoyoy** and **Julian Pajes *y* Oponda**, guilty beyond reasonable doubt, the Court hereby imposes the penalty of DEATH upon them. The accused are hereby jointly and solidarily ordered to pay the amount of ₱800,000.00 to the victim as indemnity of the ransom paid. The accused are jointly and solidarily ordered to pay ₱130,000.00 to Amelita Yang Cesar as indemnity of the amount taken from her office. The accused are ordered to pay moral damages of ₱50,000.00.

On automatic intermediate review,[57] the Court of Appeals affirmed the conviction of the appellants. The appellate court, however, reduced the penalty to *reclusion perpetua* in light of

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[55] Records, pp. 22-24.

[56] Penned by Judge Alipio C. Yumul. CA *rollo*, pp. 51-65.

[57] Pursuant to Section 3(d) in relation to Section 10 of Rule 122 of the Rules of Court.

Republic Act No. 9346, which prohibits the imposition of the death penalty.

Hence the instant appeal.

Appellant Miguel Paghunasan

Appellant Paghunasan proffers the defense of alibi. The plain version of Paghunasan was that he was not at the *locus criminis* at the time the alleged crime was committed. Rather, Paghunasan maintains that he was merely at his home in Caloocan City the whole day of 31 January 2002.[58]

To strengthen his alibi, Paghunasan points to what he perceives as flaws in his open-court identification by the private complainant Mrs. Cesar, her husband Mr. Cesar, PO3 Ceferino Gathchalian and Erlinda. Paghunasan explains:

1.) Mrs. Cesar's identification is not worthy of belief for it is contrary to common experience that a kidnap victim like herself, was not blindfolded by her kidnappers so as to allow her to see where she was being taken.[59]

Moreover, Mrs. Cesar categorically stated in her *Sinumpaang Salaysay*[60] that she did not know the names of her captors. She was only able to identify Paghunasan after the latter was already arrested and presented to her *via* a police line-up conducted by the NAKTAF.[61]

2.) The identification by Mr. Cesar and PO3 Gatchalian is likewise highly doubtful considering that their respective testimonies contradict each other. Mr. Cesar testified that Paghunasan was alone at the time he received the ransom money, but PO3 Gatchalian

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[58] TSN, 12 July 2004, p. 3.

[59] CA *rollo*, p. 44.

[60] Exhibit "A", Folder of Exhibits.

[61] CA *rollo*, p. 44.

testified that two other persons accompanied Paghunasan.[62]

3.) Erlinda's identification is also suspect. During the time that she executed her own *Sinumpaang Salaysay*,[63] Erlinda was shown a picture of appellant Paghunasan by NAKTAF agents, but was then unable to identify Paghunasan as one of the kidnappers.[64]

The Court is not impressed.

It is a well-settled principle in law that the defense of alibi is one of the weakest defenses available to an accused in a criminal case.[65] As it may easily be concocted, alibis are invariably viewed with suspicion, and, as a general rule, crumbles in light of positive identification of the offender by truthful witnesses.[66]

Conversely however, this Court has, in more than one occasion, held that the defense of alibi may acquire commensurate strength where the witnesses have made no positive and proper identification of the offender.[67] This is because the inherent weakness of alibi as a defense does not operate to relieve the prosecution of its responsibility to establish the identity of the offender by the same quantum of evidence required for proving the crime itself.[68] By assailing the credibility of his open-court identification, appellant Paghunasan seems to believe that the latter doctrine may be applied in this case.

The Court does not agree. A simple scrutiny of the contentions raised by appellant Paghunasan will reveal that they are specious

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[62] *Id.* at 45.

[63] Exhibit "B", Folder of Exhibits.

[64] CA *rollo*, p. 45.

[65] *People v. De la Cruz*, 76 Phil. 601, 604 (1946).

[66] *People v. Vargas*, 459 Phil. 645, 659-660 (2003).

[67] *People v. Cruz*, 143 Phil. 146, 153 (1970); *People v. Salas*, 160 Phil. 817, 825 (1975); *People v. Teaño*, 213 Phil. 138, 146 (1984); *People v. Somontao*, 213 Phil. 373, 383 (1984); *People v. Ola*, 236 Phil. 1, 17 (1987).

[68] *People v. Ola*, *id.*

at best, and not sufficient to destroy the credibility of his positive identification. We substantiate:

First, there is nothing contrary to common human experience about the fact that Mrs. Cesar was not blindfolded by her kidnappers. Certainly, it would be at the height of absurdity, short of an outright injustice, to discredit the testimony of a kidnap victim just because her kidnappers forgot, or decided not to blindfold her.

On the other hand, we are reminded of the following facts: (a) the kidnappers placed Mrs. Cesar at the back of a delivery van—which is virtually an enclosed structure except for two small windows at the front,[69] and (b) while thereat, three armed men guarded Mrs. Cesar.[70] Given the foregoing circumstances, we find it not hard to believe that the kidnappers deemed it no longer necessary to blindfold Mrs. Cesar.

Second, there is nothing irregular about the fact that Mrs. Cesar was not able to give the name of her kidnappers at the time she executed her *Sinumpaang Salaysay*. On the contrary, it is quite normal for a kidnap victim to be ignorant of the names of her abductors. Frequent use by kidnappers of *aliases*, like the ones in the case at bar, makes it extremely difficult for a kidnap victim to know their real names.

Be that as it may, knowledge of a person's name is not necessary for proper identification.[71] Mrs. Cesar may not know the names of her abductors, but she was nevertheless familiar with their physical features and was, thus, able to describe them quite extensively in her *Sinumpaang Salaysay*. Hence, it is perfectly logical that Mrs. Cesar was only able to identify appellant Paghunasan upon seeing him in person during the police line-up.

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[69] Records, p. 25.

[70] TSN, 3 October 2002, pp. 13-14.

[71] *People v. Tolentino*, G.R. No. 139351, 23 February 2004, 423 SCRA 448, 463.

Third, there is actually no conflict between the testimonies of Mr. Cesar and PO3 Ceferino Gatchalian. In contending that there is such conflict, appellant Paghunasan cited the following portion of the testimonies of Mr. Cesar and PO3 Ceferino Gatchalian, *viz*:[72]

Direct Examination of Christopher Cesar:

Fiscal Llobrera:

Q: Upon arriving at the cemetery at 8:00, what else happened?

A: I[t] was dark at the cemetery and so we turned on the headlights of the vehicle, sir.

Q: And then what happened?

A: After that, a motorcycle arrived wherein a man was on board and he alighted, sir.

Q: And after the person alighted from the motorcycle, what else happened?

A: He approached us and asked us if we brought the money, sir.[73] (Underscoring supplied)

Direct Examination of PO3 Ceferino Gatchalian:

Fiscal Llobrera:

Q: And then after giving instruction or order to the other team by your Superintendent Magno (sic), what else happened?

A: I and Mr. Cezar proceeded to the Dona Agripina Memorial Park and we parked at the side of the cemetery, sir.

x x x x x x x x x

Q: And what happened after that, after parking your vehicle?

A: We saw a motorcycle 125 boarded with three (3) persons and one of the persons using a cellphone approached us.

Q: Was he able to approach you?

A: Yes, sir; they (sic) approached Mr. Cesar.

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[72] CA *rollo*, p. 45.

[73] TSN, 16 December 2002, p. 18.

Q: How many of them approached Mr. Cesar?

A: Only one, sir.[74] (Underscoring supplied)

As can be gleaned from the above, Mr. Cesar never testified that Paghunasan was alone at the Capas cemetery during the pay-off. All that Mr. Cesar stated was that a man, whom he later identified as appellant Paghunasan, alighted from a motorcycle and approached him and PO3 Ceferino Gatchalian. Mr. Cesar was silent as to the number of persons boarding the motorcycle from which Paghunasan alighted. Verily, the statements of Mr. Cesar cannot be said to contradict the testimony of PO3 Ceferino Gatchalian who merely clarified that Paghunasan alighted from a motorcycle boarded by two other persons.

Significantly, Mr. Cesar and PO3 Ceferino Gatchalian uniformly attested to the more material fact that it was only appellant Paghunasan who alighted from the motorcycle and who approached them to receive the ransom money. To the mind of this Court, this is enough to make their identification of appellant Paghunasan worthy of belief. Indeed, perfect symmetry between the testimonies of the witnesses, while desirable, is not absolutely required for them to be deemed credible. To be deserving of belief, it is enough that the testimonies of the witnesses concur on material points.[75]

Fourth, the failure of Erlinda to identify appellant Paghunasan from the pictures shown to her during the time she executed her *Sinumpaang Salaysay* is not fatal to the integrity of her subsequent open court identification. In response to this issue, we hereby quote with approval a portion of the decision of the Court of Appeals, to wit:

Not even Erlinda [Santos'] failure to identify the accused-appellants when confronted by their pictures would render the prosecution's case weak. **She was able to explain the apparent difference between the picture shown her and the physical features of Paghunasan in person. But she was categorical in identifying**

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[74] TSN, 24 March 2003, pp. 7-9.

[75] *People v. Pateo*, G.R. No. 156786, 3 June 2004, 430 SCRA 609, 615.

Paghunasan as one of the persons who entered the kitchen on 31 January 2002. We do not doubt her ability to remember with precision considering that she herself testified that a gun was poked at her, that her knees were trembling out of fear, and that she just stayed in the kitchen, put her face down on the table as her employer shouted for help.[76] (Emphasis supplied).

His positive identification intact, appellant Paghunasan is left with only his alibi to fend off the serious accusations against him. Without any other evidence proving that it was physically impossible for him to be at the *locus criminis* on 31 January 2002, appellant Paghunasan's alibi must necessarily fail.

Appellant Julian Pajes

Appellant Pajes raises a different defense. Appellant Pajes admits that he drove the delivery van boarded by the kidnappers to their *nipa* hut upon request of Serio Panday, but claims that he did not know, at least at the inception, that the van was the group's getaway vehicle, let alone, that it was carrying a kidnap victim.[77] According to Pajes, he only came to have an idea that something was wrong when after arriving at the mountaintop, a lady was made to alight the delivery van and was led into the *nipa* hut by the cohorts of Serio Panday.[78]

Succinctly put, appellant Pajes denies involvement in any criminal conspiracy to kidnap Mrs. Cesar.[79] Pajes maintains that he was merely "at the wrong place at the wrong time," for which he deserves a milder penalty, if not total absolution from any penal liability.

The Court finds no merit in this contention.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide

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[76] *Rollo*, pp. 22-23.

[77] TSN, 6 November 2003, pp. 6-7.

[78] *Id.* at 8-9.

[79] CA *rollo*, pp. 46-47.

to commit it.[80] When a crime is committed under a conspiracy, the liability of all conspirators becomes collective regardless of the extent of their actual participation in the crime.[81] In other words, the act of one becomes the act of all.[82]

In determining the existence of conspiracy, direct proof of a previous agreement to commit a crime is not necessary.[83] After all, conspiracy may be inferred from the mode and manner by which the offense is perpetrated or from the very acts of the accused themselves.[84] To support a finding of conspiracy, what is merely required is an unmistakable showing that the collective acts of the accused before, during and after the commission of a felony were all aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[85]

In the case at bar, the facility and efficiency by which the abduction of Mrs. Cesar was effected was an undeniable proof of the existence of a pre-conceived plan under which the kidnappers were acting. From their entry to the NC Farms by the ingenious use of pretension, to the groups' systematic scouring of Mrs. Cesar's office, and up to their cinematic escape—the acts of the kidnappers were knitted seamlessly together in a web of a single criminal design.

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[80] Article 8(2), Act No. 3185, as amended.

[81] *People v. Maranion*, G.R. Nos. 90672-73, 18 June 1991, 199 SCRA 421, 433.

[82] *Id*.

[83] *People v. Bohol*, G.R. No. 178198, 10 December 2008, 573 SCRA 557, 568.

[84] *People v. Larrañaga*, G.R. Nos. 138874-75, 3 February 2004, 421 SCRA 530, 582.

[85] *People v. Bohol*, *supra* note 83 at 568-569.

This Court finds it impossible to accept the contention of appellant Pajes that he merely drove the delivery van at the suggestion of Serio Panday, without any knowledge of what was inside the said vehicle.[86] As correctly observed by the Court of Appeals, it is hard to believe why appellant Pajes would readily agree to drive a delivery van in going up a mountain, if, in the first place, he has no idea of what he was supposed to be transporting.[87]

Moreover, the subsequent acts of appellant Pajes contradict his claim of innocence. It may not be amiss to point out that the participation of appellant Pajes was not merely limited to transporting the kidnappers to their *nipa* hut.

Other than being the driver of the kidnappers, appellant Pajes also admitted of being the one tasked of disposing the delivery van by driving it all the way down the mountain to the town proper of Capas, Tarlac.[88] Pajes added that after parking the van somewhere in *Barangay* Dolores, Tarlac, he returned to the *nipa* hut, where he was again tasked at looking after Mrs. Cesar.[89] Finally, he was the one who accompanied Mrs. Cesar to the Capas cemetery during the night of the agreed pay-off.[90]

The aggregate participation of appellant Pajes shows that he was part of the criminal conspiracy to kidnap Mrs. Cesar. Indeed, if appellant Pajes was as innocent as he claims to be, he could have easily avoided going back to the *nipa* hut upon his descent from the mountains to the town proper of Capas, Tarlac. But instead, he did just the opposite. Pajes returned to the *nipa* hut and fulfilled the criminal purpose of the kidnappers. While he was not among those who actually raided NC Farms, his subsequent contribution to the victim's continuing detention more than speaks of his concurrence and involvement to the kidnappers' criminal design.

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[86] TSN, 6 November 2003, pp. 6-7.

[87] *Rollo*, p. 25.

[88] TSN, 6 November 2003, pp. 9-10.

[89] *Id.* at 13-14.

[90] *Id.* at 17.

Finding no reversible error on the part of the Court of Appeals in affirming the appellants' conviction, this Court is constrained to let the hammer fall where it must. We only need to be explicit that the appellants are denied of the benefit of any parole, in view of Section 3 of Republic Act No. 9346. [91]

WHEREFORE, the decision of the Court of Appeals dated 14 April 2008 in CA-G.R. CR-HC No. 00555 is hereby *AFFIRMED with the MODIFICATION* that the appellants are denied the benefit of parole.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Mendoza,*[*] *JJ.,* concur.

SPECIAL THIRD DIVISION

[A.M. No. RTJ-08-2158. April 13, 2010]
(Formerly OCA IPI No. 04-2018-RTJ)

ALFREDO FAVOR, *complainant, vs.* **JUDGE CESAR O. UNTALAN, REGIONAL TRIAL COURT, BRANCH 149, MAKATI CITY,** *respondent.*

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[91] Section 3 of Republic Act No. 9346 states:

> **Section 3**. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4108, otherwise known as the Indeterminate Sentence Law, as amended.

[*] Per Special Order No. 832, Associate Justice Jose Catral Mendoza is hereby designated as Additional Member of the Second Division in place of Associate Justice Roberto A. Abad, who is on Official Leave from April 6-8, 2010.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE COURT HAS DISCRETION TO TEMPER HARSHNESS OF ITS JUDGMENT WITH MERCY.— [W]hile this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy. Thus, in the interest of fair play and compassionate justice, considering that this was respondent Judge's first offense, we resolve to grant the instant motion for reconsideration.

R E S O L U T I O N

PERALTA, *J.*:

Before this Court is the Motion For Reconsideration dated September 28, 2009, filed by respondent Judge, of the Decision dated July 30, 2009, finding him guilty of violating Rule 2.03 of the Code of Judicial Conduct and ordering him to pay a fine of ₱5,000.00

In his Motion, respondent Judge alleged that the penalty of fine of ₱5,000.00 was too severe, considering that he is a first-time offender. Respondent Judge now prays that the Decision be reconsidered and, in lieu thereof, the recommendation of the Investigating Judge be adopted as to the imposable penalty.

In view of the foregoing, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy. Thus, in the interest of fair play and compassionate justice, considering that this was respondent Judge's first offense, we resolve to grant the instant motion for reconsideration.

ACCORDINGLY, the instant Motion for Reconsideration dated September 28, 2009 is *GRANTED*. In lieu of fine, Judge Cesar O. Untalan of the Regional Trial Court, Branch 149, Makati City, is *ADMONISHED* to be more circumspect in his

official and personal deportment, with a *WARNING* that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Nachura (Chairperson), Brion, Villarama, Jr.,[*] and *Mendoza,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 152016. April 13, 2010]

NARCISO TUMIBAY,* **RUPERTO TUMIBAY, ELENA TUMIBAY, EDUARDO TUMIBAY, CORAZON TUMIBAY, MANUELA SEVERINO *VDA. DE* PERIDA and GREGORIA DELA CRUZ,** *petitioners, vs.* **SPS. YOLANDA T. SORO and HONORIO SORO, SPS. JULITA T. STA. ANA and FELICISIMO STA. ANA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION OF JUDGMENTS; GENERAL RULE; A WRIT OF EXECUTION MUST CONFORM STRICTLY TO EVERY

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[*] Designated Member vice Ynares-Santiago, *J.*, (retired) per Raffle dated November 20, 2009, pursuant to Amended Rules under A.M. No. 99-8-09-SC.

[**] Automatically designated as additional Member vice Chico-Nazario, *J.*, (retired) per Memorandum dated January 5, 2010, pursuant to paragraph 4 of the Amended Rules in Resolution dated November 17, 2009 under A.M. No. 99-8-09-SC.

[*] Died on September 30, 2003. See *rollo*, p. 146.

ESSENTIAL PARTICULAR OF THE JUDGMENT EXECUTED; NONETHELESS, A JUDGMENT IS NOT CONFINED TO WHAT APPEARS ON THE FACE OF THE DECISION, BUT EXTENDS AS WELL TO THOSE NECESSARILY INCLUDED THEREIN OR NECESSARY THERETO.— As a general rule, the writ of execution should conform to the dispositive portion of the decision to be executed; an execution is void if it is in excess of and beyond the original judgment or award. The settled general principle is that a writ of execution must conform strictly to every essential particular of the judgment promulgated, and may not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed. Nonetheless, we have held that a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto. xxx. In *Baluyut v. Guiao*, we stressed that this rule fully conforms with Rule 39, Section 47, paragraph (c) of the Rules of Court that provides: SECTION 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows: x x x (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or **which was actually and necessarily included therein or necessary thereto**.

2. ID.; ID.; ID.; DECISION OF THE COURT MUST BE CONSIDERED IN ITS ENTIRETY; PIECEMEAL INTERPRETATION OF THE DECISION IS NOT ALLOWED.— We find that the petitioners misread the ruling in *Nazareno v. Court of Appeals* when they understood the ruling to mean that in all cases, a declaration of ownership does not include a declaration of the right to possession. What *Nazareno* actually holds is that adjudication of ownership would include the delivery of possession if the defeated party has not shown any right to possess the land independently of his rejected claim of ownership. This ruling, as understood in its correct sense, fully applies to the present case, as there is no allegation, much less any proof, that the petitioners have any right to possess the improvements on the land independently

of their claim of ownership of the subject property. Thus, the respondents have full right to possession of the subject property. We remind the petitioners that we do not allow the piecemeal interpretation of our Decision as a means to advance one's case. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and read in this context; the decision must be considered in its entirety. Read in this manner, the respondents' right to possession of the subject property fully follows.

3. ID.; ID.; ID.; REMOVAL OF IMPROVEMENTS ON PROPERTY SUBJECT OF EXECUTION, RULE.— [R]ule 39, Section 10, paragraphs (c) and (d), of the Rules of Court provides the procedure for execution of judgments for specific acts, as follows: SECTION 10. *Execution of judgments for specific act*.— x x x (d) *Removal of improvements on property subject of execution.* — When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements, except **upon special order of the court**, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. In *Buñag v. Court of Appeals*, we explained that a judgment for the delivery or restitution of property is essentially an order to place the prevailing party in possession of the property. If the defendant refuses to surrender possession of the property to the prevailing party, the sheriff or other proper officer should oust him. No express order to this effect needs to be stated in the decision; nor is a categorical statement needed in the decision that in such event the sheriff or other proper officer shall have the authority to remove the improvements on the property if the defendant fails to do so within a reasonable period of time. The removal of the improvements on the land under these circumstances is deemed read into the decision, subject only to the issuance of a special order by the court for the removal of the improvements. In light of the foregoing, we find that the CA committed no reversible error in declaring void the September 6, 1999 RTC Order.

4. ID.; ID.; ID.; PARTIES' SCHEME TO PROLONG LITIGATIONS TO AVOID THE IMPLEMENTATION OF A JUDGMENT CANNOT BE COUNTENANCED; TREBLE

COST IMPOSED AGAINST THE PETITIONERS FOR ABUSE OF JUDICIAL PROCESS, IMPOSED.— We lament that the petitioners, by instituting the present petition, has effectively delayed the full execution of the final and executory RTC judgment. In doing so, they deprived the winning respondents of the fruits of the judgment, and made a mockery of the RTC judgment that has stood scrutiny all the way to our level. We have always frowned upon any scheme to prolong litigations and we view the present dispute as an unwarranted effort to avoid the implementation of a judgment painstakingly arrived at. We cannot countenance, and in fact, condemn this kind of abuse of judicial process. Thus, we deem it fit to impose treble costs against the petitioners.

APPEARANCES OF COUNSEL

Prospero A. Anave for petitioners.
Irineo G. Calderon for respondents.

D E C I S I O N

BRION, *J.*:

Before us is the petition for review on *certiorari*,[1] filed by petitioners Narciso Tumibay (*Narciso*), Ruperto Tumibay, Elena Tumibay, Eduardo Tumibay, Corazon Tumibay, Manuela Severino *Vda. De* Perida and Gregoria Dela Cruz (*petitioners*), to reverse and set aside the decision[2] dated August 24, 2001 and resolution[3] dated January 29, 2002 of the Former Special Tenth Division of the Court of Appeals (*CA*) in CA-G.R. SP No. 56489. The assailed CA decision nullified, for having been issued with grave abuse of discretion, the order dated September 6, 1999 of the Regional Trial Court (*RTC*), Branch 30, Cabanatuan

[1] Filed under Rule 45 of the 1997 RULES OF CIVIL PROCEDURE.

[2] Penned by Associate Justice Conchita Carpio Morales (now a member of this Court), with Justices Bienvenido L. Reyes and Rebecca De Guia-Salvador, *concurring.* See *rollo*, pp. 17-23.

[3] *Rollo*, pp. 24-25.

City in Civil Case No. 8269. The assailed CA Resolution denied the petitioners' subsequent motion for reconsideration.

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

The petitioners, including the respondent Julita T. Sta. Ana (*Julita*), were the defendants in Civil Case No. 8269, an action for annulment and recovery of ownership with damages, filed on January 17, 1984 by the respondent Yolanda T. Soro (*Yolanda*) and her husband, respondent Honorio Soro. The subject of the case was a 1,083 square meter parcel of land in Cabanatuan City (*subject property*) originally titled in the name of Francisca Sacdal, the grandmother of Yolanda and Julita, under Original Certificate of Title (*OCT*) No. 1738 of the Registry of Deeds of Cabanatuan City. Thru a *"Bilihang Tuluyan ng Lupa"* dated February 2 and 13, 1967, OCT No.1738 was cancelled and Transfer Certificate of Title (*TCT*) No. T-11574 was issued in Narciso's name. Narciso subsequently sold the subject property to the other petitioners in this case, thereby causing the issuance of TCT Nos. T-23150, 27151 and 42467 in their names.

On December 30, 1993, the RTC rendered a decision, whose dispositive portion reads:

> WHEREFORE, premises considered, decision is hereby rendered, as follows:
>
> 1. Declaring the "Bilihang Tuluyan ng Lupa" dated February 2 & 13, 1967 and all sales executed subsequent thereto as null and void *ab initio*;
>
> 2. Ordering the annulment of Transfer Certificate of Title No. T-11574, issued in the name of Narciso Tumibay and all subsequent titles issued thereafter, such as TCT Nos. T-23150, 27151 and 42467 of the Register of Deeds of Cabanatuan City, in the name of the other defendants;
>
> 3. Declaring the plaintiff Yolanda T. Soro and defendant Julita T. Sta. Ana, as the sole heirs of Estela Perida and owners of the land covered originally by Original Certificate of Title No. 1738;

4. Ordering the defendants to reconvey the said property to the said Yolanda T. Soro and Julita T. Sta. Ana, and in default thereof, the Branch Clerk of Court of this Court is hereby authorized to execute the necessary deed of conveyance in favor of said Yolanda T. Soro and Julita T. Sta. Ana; and

5. Ordering the defendants, jointly and severally to pay the plaintiff ₱5,000.00 as actual and moral damages, and attorney's fee of ₱5,000.00 and cost of suit.

SO ORDERED.

The RTC decision was affirmed, successively, by the CA and by this Court. After finality, the RTC – on Yolanda's motion – issued a writ of execution. In obedience to the writ, the Register of Deeds of Cabanatuan City issued TCT No.T-98649[4] and TCT No. T-98650[5] in the names of Yolanda and Perlita.

On March 3, 1999, Yolanda and Perlita, with their respective spouses, filed with the RTC a motion to be restored to the possession of the subject property and to demolish the improvements thereon, in accordance with paragraphs (c) and (d) of Section 10, Rule 39 of the Rules of Court.[6]

The petitioners opposed the motion on the ground that there was nothing in the RTC decision that ordered the demolition of existing improvements.

THE RTC RULING

The RTC issued an Order (dated September 6, 1999) denying the respondents' motion. In sustaining the petitioners' views, the RTC noted that a writ of execution should conform to the dispositive portion of the decision sought to be executed; it cannot go beyond the terms of the judgment.[7]

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[4] *Id.* at 158.

[5] *Id.* at 159.

[6] *Id.* at 53-54.

[7] *Id.* at 55.

When the RTC denied[8] their motion for reconsideration,[9] the respondents elevated their case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. They insisted that the removal or demolition of the improvements was the logical consequence of the RTC decision.

THE CA RULING

The CA decided the petition on August 24, 2001. The appellate court, applying Rule 39, Section 10, paragraph (d) of the Rules of Court, noted that since the RTC ordered the petitioners to reconvey to the respondents the subject property that contains improvements the petitioners introduced, the demolition of the improvements can be done only after a special order of the RTC, issued upon the respondents' motion, after due hearing, and after the petitioners failed to remove the improvements within the time fixed by the RTC. Thus, the CA declared void the September 6, 1999 RTC Order and directed the RTC to fix the time within which the petitioners should remove the improvements from the subject property.

After the CA's denial[10] of their motion for reconsideration,[11] the petitioners filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

THE PETITION

The petitioners argue that the writ of execution should conform to the dispositive portion of the decision sought to be executed and the demolition of the existing improvements was not expressly ordained in the decision. They submit that to effect the demolition, the respondents must file an ejectment case. They cite *Nazareno v. Court of Appeals*,[12] which held that "being declared owner

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[8] *Id.* at 60.

[9] *Id.* at 56-59.

[10] Resolution of June 29, 2002; *id.* at 24-25.

[11] *Id.* at 26-35.

[12] 383 Phil. 229 (2000).

of the subject lot does not also mean that [the winning party] is automatically entitled to possession of all improvements thereon."

THE CASE FOR THE RESPONDENTS

The respondents submit that the petitioners' argument runs counter to the express provisions of Rule 39, Section 47 of the Rules of Court that a judgment is conclusive on all matters that the parties could have raised; to further require them to file an ejectment suit to oust the petitioners would amount to encouraging multiplicity of suits.

THE ISSUE

The core issue is whether the CA erred when it declared void the September 6, 1999 RTC Order denying the respondents' motion to be restored to possession of the subject property and to demolish the improvements thereon.

OUR RULING

We find no merit in the petition.

A judgment is not confined to what appears on the face of the decision

We are not persuaded by the petitioners' argument that, since the RTC decision to reconvey to respondents the subject property did not expressly order the removal of improvements thereon, the RTC cannot, by order, reach these improvements and accordingly act to enforce its decision.

As a general rule, the writ of execution should conform to the dispositive portion of the decision to be executed; an execution is void if it is in excess of and beyond the original judgment or award. The settled general principle is that a writ of execution must conform strictly to every essential particular of the judgment promulgated,[13] and may not vary the terms of the judgment it

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[13] *Mahinay v. Asis,* G.R. No. 170349, February 12, 2009, 578 SCRA 562, 574.

seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed.[14]

Nonetheless, we have held that a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto.[15] Thus, in *Perez v. Evite*,[16] where the ownership of a parcel of land was decreed in the judgment, the delivery of possession of the land was considered included in the decision where the defeated party's claim to possession was based solely on his claim of ownership.

In *Baluyut v. Guiao*,[17] we stressed that this rule fully conforms with Rule 39, Section 47, paragraph (c) of the Rules of Court that provides:

> SECTION 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or **which was actually and necessarily included therein or necessary thereto**. (Emphasis supplied.)[18]

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[14] *Ingles v. Cantos*, G.R. No. 125202, January 31, 2006, 481 SCRA 140.

[15] *DHL Philippines Corp. United Rank and File Asso.-Federation of Free Workers v. Buklod ng Manggagawa ng DHL Philippines Corp.*, 478 Phil. 842, 853; *Jaban v. Court of Appeals*, 421 Phil. 896, 904; 370 SCRA 221,228 (2001).

[16] 111 Phil. 564 (1961).

[17] 373 Phil. 1013 (1999).

[18] *Id.* at 404-405.

Petitioners misread Nazareno v. Court of Appeals

We find that the petitioners misread the ruling in *Nazareno v. Court of Appeals*[19] when they understood the ruling to mean that in all cases, a declaration of ownership does not include a declaration of the right to possession. What *Nazareno* actually holds is that adjudication of ownership would include the delivery of possession if the defeated party has not shown any right to possess the land independently of his rejected claim of ownership. This ruling, as understood in its correct sense, fully applies to the present case, as there is no allegation, much less any proof, that the petitioners have any right to possess the improvements on the land independently of their claim of ownership of the subject property. Thus, the respondents have full right to possession of the subject property.

We remind the petitioners that we do not allow the piecemeal interpretation of our Decision as a means to advance one's case. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and read in this context; the decision must be considered in its entirety.[20] Read in this manner, the respondents' right to possession of the subject property fully follows.

Rule 39, Section 10 sets the procedure for execution of judgment for specific acts

In addition, Rule 39, Section 10, paragraphs (c) and (d), of the Rules of Court provides the procedure for execution of judgments for specific acts, as follows:

SECTION 10. *Execution of judgments for specific act.*—

x x x x x x x x x

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[19] *Supra* note 12.

[20] *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals,* G.R. No. 138145, June 15, 2006, 490 SCRA 560, 579.

(c) *Delivery or restitution of real property.* — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within the three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

(d) *Removal of improvements on property subject of execution.* — When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements, except **upon special order of the court**, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. (Emphasis supplied)

In *Buñag v. Court of Appeals*,[21] we explained that a judgment for the delivery or restitution of property is essentially an order to place the prevailing party in possession of the property. If the defendant refuses to surrender possession of the property to the prevailing party, the sheriff or other proper officer should oust him. No express order to this effect needs to be stated in the decision; nor is a categorical statement needed in the decision that in such event the sheriff or other proper officer shall have the authority to remove the improvements on the property if the defendant fails to do so within a reasonable period of time. The removal of the improvements on the land under these circumstances is deemed read into the decision, subject only to the issuance of a special order by the court for the removal of the improvements.[22]

In light of the foregoing, we find that the CA committed no reversible error in declaring void the September 6, 1999 RTC Order.

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[21] 363 Phil. 216 (1999).

[22] *Id.* at 597-598.

Treble costs against petitioners

We lament that the petitioners, by instituting the present petition, has effectively delayed the full execution of the final and executory RTC judgment. In doing so, they deprived the winning respondents of the fruits of the judgment, and made a mockery of the RTC judgment that has stood scrutiny all the way to our level. We have always frowned upon any scheme to prolong litigations and we view the present dispute as an unwarranted effort to avoid the implementation of a judgment painstakingly arrived at. We cannot countenance, and in fact, condemn this kind of abuse of judicial process. Thus, we deem it fit to impose treble costs against the petitioners.

We note that the petitioners filed a Manifestation dated August 28, 2008[23] informing us that Julita sold her *pro indiviso* share in the subject property to one Corazon T. Logramente thru a "*Bilihang Lubusan ng Lupa*" dated July 17, 2003, and the latter caused the annotation of her adverse claim in the TCT Nos. T-98649 and T-98650. However, this supervening event has no bearing to the present case where the only issue involved is the propriety of the September 6, 1999 RTC Order that denied the respondents' motion to be restored in possession. Besides, whatever right Corazon T. Logramente, a third party to the present dispute, may have on the subject property is adequately protected by the inscription of her adverse claim in the land titles. Any right she may have can only be raised or brought by her as the affected party, or the real party-in-interest, in a proper forum.

WHEREFORE, in light of all the foregoing, we hereby *DENY* the petition and *AFFIRM* the decision dated August 24, 2001 and resolution dated January 29, 2002 of the Former Special Tenth Division of the Court of Appeals (*CA*) in CA-G.R. SP No. 56489 insofar as it declared void the Order dated September 6, 1999 of the Regional Trial Court, Branch 30, Cabanatuan City in Civil Case No. 8269. The Court is directed to conduct a hearing with dispatch, in accordance with Section 10 (d) of

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[23] *Rollo*, pp. 152-154.

Rule 39 of the Revised Rules of Court, with due notice to the parties involved.

Treble costs against the petitioners.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Perez, and *Mendoza,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 165155. April 13, 2010]

REGIONAL AGRARIAN REFORM ADJUDICATION BOARD, Office of the Regional Adjudicator, San Fernando, Pampanga, CECILIA MANIEGO, JOSE BAUTISTA, ELIZA PACHECO, JUANITO FAJARDO, MARIO PACHECO, MARIANO MANANGHAYA as heir of Antonio Mananghaya, MARCIANO NATIVIDAD, ROBERTO BERNARDO in his personal capacity and as heir of Pedro Bernardo, EDILBERTO NATIVIDAD, as heir of Ismael Natividad, JEFFREY DIAZ as heir of Jovita R. Diaz, RODOLFO DIMAAPI, ALBERTO ENRIQUEZ, BENIGNO CABINGAO, MARIO GALVEZ, DELFIN SACDALAN, as heir of Avelino Santos, *petitioners*,[1] *vs.* **COURT OF APPEALS, VERONICA R. GONZALES, DEOGRACIAS REYES, LEONARDO REYES, ISABELITA BALATBAT, MANUELA REYES, WILHELMINA ALMERO, ARTURO REYES, EPIFANIO REYES, GLORIA**

[**] Designated additional Member *vice* Justice Roberto A. Abad per Special Order No. 832 dated March 30, 2010.

[1] Only the signatories to the Petition for *Certiorari* submitted themselves to the jurisdiction of this Court as petitioners.

REYES, MARIO REYES, TERESITA BALATBAT, LYDIA BALATBAT, FERNANDO BALATBAT, VICENTE BALATBAT, GILBERTO REYES, RENE REYES, EMILIA DUNGO, and EDGARDO REYES, represented by VERONICA R. GONZALES, for herself and as attorney-in-fact, *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; CONSTRUED LIBERALLY; DISMISSAL OF APPEALS PURELY ON TECHNICAL GROUNDS IS FROWNED UPON; REASON.— There is nothing sacred about the forms of pleadings or processes, their sole purpose being to facilitate the application of justice to the rival claims of contending parties. Hence, pleadings as well as procedural rules should be construed liberally. Dismissal of appeals purely on technical grounds is frowned upon because rules of procedure should not be applied to override substantial justice. Courts must proceed with caution so as not to deprive a party of statutory appeal; they must ensure that all litigants are granted the amplest opportunity for the proper and just ventilation of their causes, free from technical constraints. If the foregoing tenets are followed in a civil case, their application is made more imperative in an agrarian case where the rules themselves provide for liberal construction xxx.

2. ID.; ID.; REQUIRING A LITERAL APPLICATION OF THE RULES WHEN ITS PURPOSE HAS ALREADY BEEN SERVED IS OPPRESIVE SUPERFLUITY.— Both Notices of Appeal stated that the petitioners were appealing the decision "on the grounds of *questions of fact and of law*," which we find sufficient statement of the ground for appeal under Section 2(a), Rule XIII of the DARAB Rules. While the notices omitted to state that "the decision would cause grave and irreparable damage and injury to the appellant," we find such punctilious fidelity to the language of the DARAB Rules unnecessary. Surely by appealing the Decision of the Regional Adjudicator, the petitioners were already manifesting that they will be damaged by the assailed decision. Requiring a literal application of the rules when its purpose has already been served is oppressive superfluity.

3. ID.; APPEALS; NOTICE OF APPEAL; NOT INTENDED TO DETAIL ONE'S OBJECTIONS REGARDING THE APPEALED DECISION; PURPOSE OF NOTICE OF APPEAL.— It must be stressed that the purpose of the notice of appeal is *not to detail* one's objections regarding the appealed decision; that is the purpose of the appellants' memorandum. In the context of a DARAB case, the notice of appeal serves only to inform the tribunal or officer that rendered the appealed decision (*i.e.*, the Regional Adjudicator) of the *timeliness* of the appeal and of the *general reason* for the appeal, and to prepare the *records* thereof for transmission to the appellate body (*i.e.*, the DARAB). Petitioners' Notices of Appeal contain everything that is necessary to serve these purposes.

4. ID.; ID.; ID.; APPROVAL THEREOF IS A MINISTERIAL DUTY OF THE COURT WHICH RENDERED THE DECISION ONCE THE APPEAL IS FILED ON TIME; THE BODY WHICH RENDERED THE DECISION SHOULD NOT PASS UPON THE QUESTION OF WHETHER THE APPEAL IS FRIVOLOUS AND INTENDED MERELY FOR DELAY OR NOT.— The Regional Adjudicator is also correct when she ruled that she has no power to determine if the appeal is frivolous and intended merely for delay. Such matters are for the appellate body to determine after it has studied the appellant's brief or the appeal memorandum. The body which rendered the appealed decision should not pass upon the question of whether the appeal was taken manifestly for delay because such determination belongs to the appellate body. For the lower body to do so would constitute a review of its own judgment and a mockery of the appellate process. This principle is applicable to agrarian disputes by virtue of Section 8, Rule XIII of the DARAB Rules which states that the Board (not the Regional Adjudicator) has the power to impose reasonable penalties, including fine or censure, on parties who file frivolous or dilatory appeals. The implication is that since the Board is the one which has the power to punish, it is also the one which has the power to decide if there has been a violation. The Regional Adjudicator has no such power. She must allow the appeal if it is timely and compliant with the reglementary requirements. It has been held that when an appeal is filed on time, the approval of a notice of appeal is a ministerial duty of the court or tribunal which rendered the decision.

5. ID.; CIVIL PROCEDURE; PARTIES; REAL PARTY-IN-INTEREST, DEFINED; THE HEIRS OF THE DECEASED AGRICULTURAL LESSEES AND ACTUAL TILLERS ON THE LAND ARE REAL PARTIES-IN-INTEREST IN THE AGRARIAN DISPUTE.— Respondents claim, and the CA has ruled, that the March 5, 2003 Notice of Appeal (filed by the second group) was a "forgery" and thus void, because it bore signatures above the names of the deceased Avelino and Pedro, which were obviously not written by the decedents themselves. First of all, we have to point out that the confusion in this case was brought about by respondents themselves when they included in their complaint two defendants who were already dead. Instead of impleading the decedent's heirs and current occupants of the landholding, respondents filed their complaint against the decedents, contrary to the following provision of the 1994 DARAB Rules of Procedure: **RULE V PARTIES, CAPTION AND SERVICE OF PLEADINGS SECTION 1. Parties in Interest.** Every agrarian case must be initiated and defended *in the name of the real party in interest. x x x* A real party in interest is defined as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of a suit." The real parties in interest, at the time the complaint was filed, were no longer the decedents Avelino and Pedro, but rather their respective heirs who are entitled to succeed to their rights (whether as agricultural lessees or as farmers-beneficiaries) under our agrarian laws. They are the ones who, as heirs of the decedents and actual tillers, stand to be removed from the landholding and made to pay back rentals to respondents if the complaint is sustained.

6. ID.; ID.; ID.; ID.; FORMAL SUBSTITUTION OF PARTIES IS NOT NECESSARY WHEN THE HEIRS THEMSELVES VOLUNTARILY PARTICIPATED IN THE PROCEEDINGS.— Since respondents failed to correct their error (they did not amend the erroneous caption of their complaint to include the real parties-in-interest), they cannot be insulated from the confusion which it engendered in the proceedings below. But at any rate, notwithstanding the erroneous caption and the absence of a formal substitution of parties, jurisdiction was acquired over the heirs of Avelino and Pedro who voluntarily participated in the proceedings below. This Court has ruled

that formal substitution of parties is not necessary when the heirs themselves voluntarily appeared, participated, and presented evidence during the proceedings.

7. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; THE CHANGE IN THE PUBLIC DOCUMENT MUST BE SUCH AS TO AFFECT THE INTEGRITY OF THE SAME OR CHANGE THE EFFECTS WHICH IT WOULD OTHERWISE PRODUCE; SIGNING THE DECEDENTS' NAMES IN THE NOTICE OF APPEAL, NOT TAINTED WITH MALICE.— Respondents insist that allowing the appeal would condone an act which is criminal in nature. We do not agree. Article 3 of the Revised Penal Code (RPC) provides that malice or criminal intent (*dolo*) is an essential requisite of all crimes and offenses defined therein. The circumstances narrated above do not indicate the presence of *dolo*. In this regard, it should be noted that the heirs who signed the Notice of Appeal are lay persons unfamiliar with the technical requirements of procedure and pleadings. This unfamiliarity, compounded by the absence of legal counsel, appears to have caused the imperfections in their signing of the Notice of Appeal. We do not see any criminal intent motivating them. Moreover, in cases of falsification of public documents, such as documents introduced in judicial proceedings, "the change in the public document must be such as to *affect the integrity* of the same or *change the effects* which it would otherwise produce; for, unless that happens, there could not exist the essential element of the intent to commit the crime, which is required by Article 3 of the Penal Code." In the instant case, given the heirs' admissions contained in several pleadings that Avelino and Pedro are already deceased and their submission to the jurisdiction of the Regional Adjudicator as the successors-in-interest of the decedents, the effect would be the same if the heirs did not sign the decedents' names but their own names on the appeal. As the recognized *real* parties in interest, the case actually proceeded against the heirs and the judgment rendered was executed against them. It was thus unnecessary for the heirs to sign the decedents' names when their own names, as the real parties in interest, would have served the same purpose just as effectively. Given the foregoing circumstances, we conclude that the unfortunate matter of signing the decedents' names in the Notice of Appeal is an innocent and harmless error on the part of the heirs.

8. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM; DARAB RULE; FILING OF TWO MOTIONS FOR RECONSIDERATION IS PROHIBITED.— [W]e must point out that while respondents bewail petitioners' lack of strict adherence to procedural rules, they also failed to observe some rules. It is evident from the records that respondents filed two motions for reconsideration after the August 5, 2003 Order of the Regional Adjudicator. This is prohibited under Section 12, Rule VIII of DARAB Rules, which provides that only one motion for reconsideration shall be allowed. Moreover, respondents failed to exhaust administrative remedies when they filed their petition for *certiorari* before the CA, instead of the Board. xxx

9. ID.; ID.; ID.; AN AGGRIEVED PARTY CAN ONLY RESORT TO JUDICIAL REVIEW AFTER IT HAS INVOKED THE AUTHORITY OF THE BOARD; JUDICIAL REVIEW NOT PROVIDED FOR THE DECISIONS OF ADJUDICATORS.— An aggrieved party can only resort to judicial review *after* it has invoked the authority of the Board. Judicial review is not provided for orders, rulings, and decisions of adjudicators. It is stated in Section 1, Rule II that the Board has *primary and exclusive*, original and *appellate* jurisdiction over agrarian disputes involving agrarian laws and *their implementing rules and regulations*. If respondents were strict adherents to procedural rules, they should have followed Section 2(b) of Rule XIII which provides for an appeal to the Board on the ground of *grave abuse of discretion* on the part of the adjudicator. These matters, while not raised by the parties, are important considerations in resolving the case where one party laments that she is prejudiced by the leniency that is afforded to the other party. It should be made clear that there was no partiality or undue advantage given to petitioners that had not likewise been enjoyed by respondents.

10. ID.; ID.; ID.; EXEMPTION FROM THE COMPREHENSIVE AGRARIAN REFORM LAW IS AN ADMINISTRATIVE MATTER THE PRIMARY JURISDICTION OVER WHICH IS LODGED WITH THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM (DAR); ISSUE OF AUTHENTICITY OF THE DAR EXEMPTION ORDER IS ENTIRELY FACTUAL IN NATURE.— Contrary to respondents' arguments, there was never any ruling regarding

> the validity or authenticity of the exemption order. What was ruled upon, and became final, was that the exemption order cannot be reviewed by the provincial adjudicator or DARAB since exclusive appellate jurisdiction rests in the Office of the DAR Secretary. Thus, it appears that petitioners' right to question the *authenticity* of the exemption order in the proper forum has not yet been foreclosed. The instant case, however, is not the proper place to bring the issue of authenticity. Exemption from the comprehensive agrarian reform law is an administrative matter the primary jurisdiction over which has been lodged with the DAR Secretary. Moreover, the issue of authenticity is entirely factual.

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance (DAR) for public petitioner.

Anselmo M. Carlos for private petitioners.

Venancio C. Reyes, Jr. for respondents.

D E C I S I O N

DEL CASTILLO, *J.:*

Rules of procedure are tools to facilitate a fair and orderly conduct of proceedings. Strict adherence thereto must not get in the way of achieving substantial justice. So long as their purpose is sufficiently met and no violation of due process and fair play takes place, the rules should be liberally construed, especially in agrarian cases.

This Petition for *Certiorari*[2] assails the June 9, 2004 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 79304 which

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[2] *Rollo*, pp. 12-28. In the resolution dated August 31, 2005, the instant "Petition for *Certiorari*" was given due course notwithstanding procedural infirmities so as not to deny petitioners of their last opportunity to ventilate their cause; *id.* at 263-265.

[3] *Id.* at 30-39; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Presiding Justice Cancio C. Garcia and Associate Justice Lucas P. Bersamin.

granted the Petition for *Certiorari* of respondents and held that petitioners' notices of appeal are mere scrap of paper for failure to specify the ground for the appeal; and for being forged. Also assailed is the August 31, 2004 Resolution[4] denying petitioners' motion for reconsideration. The assailed Decision disposed as follows:

> WHEREFORE, premises considered, the Petition is GRANTED and the Notices of Appeal filed by the private respondents before the public respondent are hereby decreed without legal effect.
>
> SO ORDERED.[5]

Factual Antecedents

Respondents are co-owners of several parcels of land primarily devoted to rice production consisting of 58.8448 hectares, located at Sta. Barbara, Baliuag, Bulacan and covered by Transfer Certificate of Title (TCT) Nos. T-158564, T-215772, T-215776, T-215777, T-215775. Petitioners are in actual possession of the said land as tillers thereof. According to respondents, petitioners are agricultural lessees with the obligation to pay annual lease rentals. On the other hand, petitioners aver that they are farmer-beneficiaries under Presidential Decree 27, who have been granted Certificates of Land Transfer (CLTs) and (unregistered) emancipation patents (EPs).

On March 6, 2002, respondents filed a complaint for ejectment against petitioners for non-payment of rentals before the Department of Agrarian Reform Adjudication Board (DARAB), Office of the Regional Adjudicator, San Fernando, Pampanga. They alleged that petitioners failed to pay and remit the agreed lease rentals to respondents since 1994, or for a period of eight years. The case was docketed as DARAB Case No. R-03-02-0213-Bul'02.

Among the named defendants were Avelino Santos (Avelino) and Pedro Bernardo (Pedro), who were already deceased at

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[4] *Id.* at 49.

[5] *Id.* at 39.

the time of the filing of the complaint. Per the death certificates presented before the Regional Adjudicator, Avelino died on December 29, 1997, while Pedro passed away on July 25, 1999. Thus, when the complaint for ejectment was filed in 2002, the *actual* tillers on the land were already the successors-in-interest of Avelino and Pedro, namely Delfin Sacdalan (Delfin) and Roberto Bernardo (Roberto), respectively. Despite such disclosure, no amendment to implead the real parties-in-interest was made to the complaint. Instead on May 9, 2002, the Regional Adjudicator ordered the respective legal heirs to substitute the named decedents in the case. For some reason, no formal substitution of party litigants took place either. However, it is clear from the records, and neither party disputes, that notwithstanding the non-amendment of the complaint and the absence of a formal substitution, the heirs of Avelino and Pedro appeared and participated in the proceedings below. The position papers of respondents[6] as well as petitioners[7] both named Delfin and Roberto as the heirs of the two decedents and parties to the case.[8] Thus, the records support a conclusion that the respondents acquiesced to the participation of the said heirs as the real parties-in-interest.

Rulings of the Regional Adjudicator
a) Decision dated January 23, 2003

After the submission of the parties' respective position papers, Regional Adjudicator Fe Arche Manalang (Manalang) issued a Decision[9] dated January 23, 2003 in favor of respondents, the dispositive portion of which states:

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[6] DARAB records, pp. 139-138.

[7] *Id.* at 228-227.

[8] Roberto Bernardo was impleaded as a defendant in his own right. After the order for substitution of parties, he was also recognized by both parties in their respective position papers as the representative of the deceased Pedro Bernardo.

[9] *Rollo*, pp. 71-79.

WHEREFORE, premises considered, judgment is hereby rendered:

1. Severing and extinguishing the existing tenancy/agricultural leasehold relationship existing between the plaintiffs-landowners and the defendants over the landholdings described in paragraph 2 of the complaint.

2. Directing the defendants and all persons claiming rights under them to:

   a. Vacate the landholdings in question and peacefully surrender possession thereof to the plaintiffs;

   b. Remove at their own expense all structures and other improvements introduced thereon if any;

   c. Continue to pay to the plaintiffs the annual leasehold rentals due thereon until the latter are fully restored to the premises in question.

3. Directing the said defendants to pay to the plaintiffs, jointly and severally the amount of ₱300,000.00 as and by way of liquidated damages;

4. Denying all other claims for lack of basis; and

5. Without pronouncement as to costs.

SO ORDERED.

The Decision explained that with the exemption of the subject properties from the coverage of the Comprehensive Agrarian Reform Program (CARP), as evidenced by the December 18, 1992 Order issued by Department of Agrarian Reform (DAR) Regional Director Antonio M. Nuesa (which also directed the cancellation of the issued CLTs/EPs in the proper forum), petitioners could only retain their status as agricultural lessees if they complied with their statutory obligations to pay the required leasehold rentals when they fell due. Since all the petitioners failed to *prove* that they complied with their rental obligations to respondents since 1994, the Regional Adjudicator held that they could no longer invoke their right to security of tenure.

Aggrieved by the adverse Decision, petitioners filed two separate notices of appeal; one was filed on February 28, 2003[10] by petitioners Marciano Natividad, Alberto Enriquez, Benigno Cabingao, and Rodolfo Dimaapi (*first group*); while the other was filed on March 5, 2003 by petitioners Cecilia Maniego, Jose Bautista, Eliza Pacheco, Roberto Bernardo, Ismael Natividad,[11] Juanito Fajardo, Antonio Mananghaya,[12] Jovita R. Diaz,[13] Mario Pacheco, Emilio Peralta, Mario Galvez, *and the two decedents* Pedro and Avelino (*second group*).[14] Both notices of appeal were similarly worded thus:

> DEFENDANTS, unto this Honorable Board, hereby serve notice that they are appealing the decision rendered in the above-entitled case, which was *received on February 18, 2003* to the DARAB, Central Office at Diliman, Quezon City on the grounds of *question of law and fact.*

Unlike their previous pleadings, which were all signed by Atty. Jaime G. Mena (Atty. Mena), petitioners' notices of appeal were not signed by a lawyer.

On March 6, 2003, respondents filed a motion to dismiss the appeal[15] and an *ex-parte* motion for the issuance of a writ of execution and/or partial implementation of the decision against non-appealing defendants.[16] They presented three grounds for the dismissal of the appeal: first, the two notices did not state the grounds relied upon for the appeal; second, the March 5, 2003 Notice of Appeal was filed beyond the reglementary period; third, the March 5, 2003 Notice of Appeal contained the forged signatures of the deceased defendants Avelino and Pedro.

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[10] *Id.* at 80-81.

[11] Now deceased and substituted by Edilberto Natividad.

[12] Now deceased and substituted by Mariano Mananghaya.

[13] Now deceased and substituted by Jeffrey Diaz.

[14] *Rollo,* pp. 82-83.

[15] *Id.* at 84-86.

[16] *Id.* at 89-91.

b) May 6, 2003 Order

On May 6, 2003, the Regional Adjudicator issued an Order[17] giving due course to the appeal, except with respect to the decedents Avelino and Pedro, whose signatures were held to be falsified. Thus, a writ of execution was issued against the non-appealing defendants and the deceased defendants.

The petitioners received the above Order only on May 8, 2003, together with the writ of execution,[18] which was promptly implemented on the same day and on May 10, 2003.[19]

Dissatisfied with the May 6, 2003 Order of the Regional Adjudicator, both the respondents and the petitioners whose appeal was disallowed, moved for reconsideration of the order. Respondents reiterated[20] that the Regional Adjudicator should not have given due course to the appeal because it did not adhere strictly with Section 2, Rule XIII of the DARAB Rules of Procedure; and that it was a dilatory or frivolous appeal that deserved outright dismissal.

On the other hand, the petitioners who were included in the writ of execution, including the heirs of Avelino and Pedro, now represented by the DAR-Legal Counsel Atty. Dauphine B. Go,[21] argued that the May 6, 2003 Order was hastily executed, without giving them an opportunity to question its correctness. They pointed out that Pedro's signature was not forged, since what appears thereon is actually the name of his widow, Pilar Bernardo (Pilar).[22] As for the signature of Avelino, which was

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[17] *Id.* at 93-94.

[18] Implementation Report dated May 12, 2003, DARAB records, pp. 429-427.

[19] *Id.* at 439.

[20] Plaintiffs' Motion for Reconsideration dated May 13, 2003, *id.* at 424-423.

[21] A motion relieving Atty. Jaime G. Mena of his legal services and the entry of appearance of DAR-Legal Officer Atty. Dauphine B. Go were filed on March 13, 2003, *id.* at 367-361.

[22] *Id.* at 483 and 480.

executed by his widow, Jovita Santos (Jovita), the same was an innocent error since she did not know which name to write, having been unaided by counsel. Jovita maintained that she simply thought that writing her deceased husband's name on the Notice of Appeal would relay the intention of the heirs to appeal the adverse decision.[23]

A hearing was conducted on July 3, 2003,[24] where the heirs of Avelino and Pedro personally appeared to explain the alleged falsification of signatures. Pilar, the widow of Pedro, explained that she did not sign the Notice of Appeal herself, but that she allowed her son Roberto to sign it for her. Roberto confirmed his mother's testimony and admitted that he personally signed all documents and pleadings on behalf of his mother, Pilar. Their testimonies are verified by the records. As for Jovita, widow of Avelino, she admits signing her deceased husband's name in all pleadings. All of them explained that their only intention was to sign the pleadings on behalf of their deceased relatives so as to be able to participate in the proceedings.

c) August 5, 2003 Order

Based on these testimonies, Regional Adjudicator Manalang allowed the appeal of the heirs of the two decedents and nullified the writ of execution as regards them in an Order dated August 5, 2003.[25] It resolved the two motions in this wise:

> Plaintiffs in their first-cited motion lightly brushed off the defendants' Notice of Appeal as a mere scrap of paper but [do] not elaborate how they arrived at this conclusion, apart from a general statement that the same [do] not assign any specific errors in the findings of fact and conclusions of law made in the decision being challenged.
>
> While this may be so, it is not for this Office to pass on the merits of the appeal. All that it is called upon to do is to determine whether the same was seasonably filed and perfected by the appellants

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[23] *Id.* at 482 and 479.

[24] *Id.* at 545-543.

[25] *Id.* at 624-621.

within the prescribed reglementary period. With an affirmative finding on this aspect, nothing more remains to be done except to allow the appeal to run its full course.

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Evaluating the parties' conflicting claims x x x this Office finds for the plaintiffs x x x. However, with the voluntary confessions of Pilar Bernardo and Jovita Santos x x x who are the widows of the deceased tenants Pedro Bernardo and Avelino Santos that they really mean to appeal the adverse decision affecting their late spouses' farmholdings, any perceived legal defect in the manner of affixing their signatures on the questioned Notices of Appeal must give way to the greater demands of justice and equity. x x x

x x x x x x x x x

FOREGOING premises considered, Order is hereby issued:

1. Denying the plaintiffs' Motion for Reconsideration filed on May 13, 2003;
2. Noting without action the same plaintiffs' Motion for Execution Pending Appeal filed on May 14, 2003;
3. Giving due course to the Motion for Reconsideration (from the Order of May 6, 2003 and Writ of Execution dated May 8, 2003) filed by the *Heirs of Pedro Bernardo, Heirs of Avelino Santos,* and of Ismael Natividad[26] and thereby allowing their appeal to the exclusion of the other defendants-movants;
4. *Motu proprio* quashing the Writ of Execution issued on May 8, 2003 directed against aforenamed defendants and thereby nullifying all proceedings undertaken in connection therewith.

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SO ORDERED.

Respondents moved for another reconsideration on August 14, 2003.[27] This was denied in the November 13, 2003

[26] The order admitted its error in the May 6, 2003 Decision which included Ismael Natividad among the deceased parties.

[27] DARAB records, pp. 650-647.

Order,[28] which also ordered the sheriff to restore the farmholdings of the heirs of Avelino and Pedro in view of the quashal of the writ of execution as to the said individuals. Respondents sought another reconsideration,[29] which was again denied on January 9, 2004.[30]

Respondents thus filed a petition for *certiorari* before the CA. They argued that the DARAB no longer had any jurisdiction to reverse the portion of its Decision, which had already been duly executed upon the authority of a writ issued on May 6, 2003. They also insisted that both notices of appeal were infirm for failure to state the grounds for an appeal and for containing forged signatures.

Ruling of the Court of Appeals

The appellate court found merit in respondents' petition.

It held that the Notice of Appeal of the second group bearing the signatures of deceased Avelino and Pedro was a product of forgery, and thus had no legal effect. The appellate court brushed aside the heirs' explanations that they merely signed the decedents' names to show their intention to appeal the Regional Adjudicator's decision. It found their intentions immaterial and irrelevant to the nullity of a forged instrument.

Further, it found the two Notices of Appeal lodged by the first and second groups to be mere scraps of paper as they failed to comply with the mandate of Section 2, Rule XIII of the "1997 DARAB New Rules of Procedure" (actually, it should have been the *1994* DARAB New Rules of Procedure[31]).

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[28] *Id.* at 682-680.

[29] *Id.* at 702-700.

[30] *Id.* at 730-728.

[31] There is no 1997 DARAB Rules of Procedure. The only previous and existing versions are the 1989, 1994, 2003 and 2009 DARAB Rules of Procedure. The complaint in the instant case was filed on March 6, 2002, during the effectivity of the 1994 DARAB Rules of Procedure, thus it is the latter which is applicable in this case. This is further reinforced by the fact that the 2003 DARAB Rules of Procedure, which became effective when the subject notices

According to the CA, the Notices of Appeal failed to *specifically* allege the grounds relied upon for the appeal. The statement that they are appealing on "questions of fact and law" was held to be insufficient because an appeal, being a mere statutory privilege, must be exercised in the manner prescribed by the provisions of law authorizing it.

Petitioners' Motion for Reconsideration[32] was denied. Hence, this petition seeking a review of the Decision dated June 9, 2004 of the CA.

Issue

The issues raised by both parties are as follows:

(1) Whether the Notices of Appeal dated February 28, 2003 and March 3, 2003 are "mere scraps of paper" for failure to state the grounds relied upon for an appeal; and

(2) Whether the Notice of Appeal dated March 3, 2003 is null and void for containing two falsified signatures.

Petitioners' Arguments

Petitioners pray that their Notices of Appeal to the DARAB be given due course on the ground that they have substantially complied with the rules as set forth in Section 2, Rule XIII of the 1994 DARAB New Rules of Procedure. They posit that their appeal on "questions of fact and law" should suffice, even if they omitted the phrase "which if not corrected would cause grave irreparable damage and injury to them." They argue that the stringent application of the rules denied them substantial justice.

Petitioners also argue that the complaint itself was filed against their deceased predecessors-in-interest. Hence, if technicality

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of appeal were filed, expressly provides in Section 1, Rule XXIV (Miscellaneous Provisions) thereof that "all cases *pending* with the Board and the Adjudicators, prior to the date of effectivity of these Rules, shall be governed by the DARAB Rules prevailing *at the time of their filing.*"

[32] *Rollo,* pp. 40-47.

is to be followed, the complaint should have been dismissed as to the deceased defendants. But the case continued and they, as heirs, participated in the proceedings. Thus when they signed the Notice of Appeal, their intent was not to defraud but only to continue their quest for justice.

Respondents' Arguments

Respondents reiterate that the notices of appeal are "mere scraps of paper" for failure to state the grounds relied upon for the appeal and for containing forged signatures. They insist that giving effect to the Notice of Appeal would countenance an act which is criminal in nature. Respondents maintain that there should be strict adherence to the technical rules of procedure because the DARAB rules frown upon frivolous and dilatory appeals.

Our Ruling

The petition is meritorious. The defects found in the two notices of appeal are not of such nature that would cause a denial of the right to appeal. Placed in their proper factual context, the defects are not only excusable but also inconsequential.

Alleged failure to specify grounds for appeal

There is nothing sacred about the forms of pleadings or processes, their sole purpose being to facilitate the application of justice to the rival claims of contending parties. Hence, pleadings as well as procedural rules should be construed liberally. Dismissal of appeals purely on technical grounds is frowned upon because rules of procedure should not be applied to override substantial justice. Courts must proceed with caution so as not to deprive a party of statutory appeal; they must ensure that all litigants are granted the amplest opportunity for the proper and just ventilation of their causes, free from technical constraints.[33]

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[33] See *Remulla v. Manlongat*, 484 Phil. 832, 841 (2004); *Magsaysay Lines, Inc. v. Court of Appeals*, 329 Phil. 310, 322-323 (1996); *Piglas-Kamao*

If the foregoing tenets are followed in a civil case, their application is made more imperative in an agrarian case where the rules themselves provide for liberal construction, thus:

> Rule I
> GENERAL PROVISIONS
>
> Section 2. Construction. These Rules shall be liberally construed to carry out the objectives of the agrarian reform program and to promote just, expeditious, and inexpensive adjudication and settlement of agrarian cases, disputes or controversies.
>
> x x x x x x x x x
>
> Section 3. Technical Rules Not Applicable. The Board and its Regional and Provincial Adjudicators shall not be bound by technical rules of procedure and evidence as prescribed in the Rules of Court, but shall proceed to hear and decide all agrarian cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity.
>
> x x x x x x x x x
>
> Rule VIII
> PROCEEDINGS BEFORE THE ADJUDICATORS AND THE BOARD
>
> Section 1. Nature of Proceedings. The proceedings before the Board or its Adjudicators shall be non-litigious in nature. Subject to the essential requirements of due process, the technicalities of law and procedure and the rules governing the admissibility and sufficiency of evidence obtained in the courts of law shall not apply. x x x[34]

Guided by the foregoing principles, we find that the Notices of Appeal substantially complied with all that is required under the 1994 DARAB Rules. The following provisions are instructive in making this conclusion:

(Sari-Sari Chapter) v. National Labor Relations Commission, 409 Phil. 735, 744-745 (2001).

[34] 1994 DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD RULES OF PROCEDURE.

Rule XIII
APPEALS

Section 1. Appeal to the Board. a) An appeal may be taken from an order, resolution or decision of the Adjudicator to the Board by either of the parties or both, orally or in writing, within a period of fifteen (15) days from the receipt of the order, resolution or decision appealed from, and serving a copy thereof on the adverse party, if the appeal is in writing.

b) An oral appeal shall be reduced into writing by the Adjudicator to be signed by the appellant, and a copy thereof shall be served upon the adverse party within ten (10) days from the taking of the oral appeal.

Section 2. Grounds. The aggrieved party may appeal to the Board from a final order, resolution or decision of the Adjudicator on any of the following grounds:

a) That *errors in the findings of fact or conclusions of laws* were committed which, if not corrected, would cause grave and irreparable damage and injury to the appellant;

b) That there is a grave abuse of discretion on the part of the Adjudicator; or

c) That the order, resolution or decision is obtained through fraud or coercion.

x x x x x x x x x

Section 5. Requisites and Perfection of the Appeal. a) The Notice of Appeal shall be filed within the reglementary period as provided for in Section 1 of this Rule. It shall state the date when the appellant received the order or judgment appealed from and the proof of service of the notice to the adverse party; and

b) An appeal fee of Five Hundred Pesos (₱500.00) shall be paid by the appellant within the reglementary period to the DAR Cashier where the Office of the Adjudicators is situated. x x x

Non-compliance with the above-mentioned requisites shall be a ground for dismissal of the appeal.

Both Notices of Appeal stated that the petitioners were appealing the decision "on the grounds of *questions of fact and of law*," which we find sufficient statement of the ground for

appeal under Section 2(a), Rule XIII of the DARAB Rules. While the notices omitted to state that "the decision would cause grave and irreparable damage and injury to the appellant," we find such punctilious fidelity to the language of the DARAB Rules unnecessary. Surely by appealing the Decision of the Regional Adjudicator, the petitioners were already manifesting that they will be damaged by the assailed decision. Requiring a literal application of the rules when its purpose has already been served is oppressive superfluity.

It must be stressed that the purpose of the notice of appeal is *not to detail* one's objections regarding the appealed decision; that is the purpose of the appellants' memorandum.[35] In the context of a DARAB case, the notice of appeal serves only to inform the tribunal or officer that rendered the appealed decision (*i.e.*, the Regional Adjudicator) of the *timeliness* of the appeal and of the *general reason* for the appeal, and to prepare the *records* thereof for transmission to the appellate body (*i.e.*, the DARAB). Petitioners' Notices of Appeal contain everything that is necessary to serve these purposes.

Another important consideration is the fact that petitioners were obviously not assisted by counsel in the filing of the Notices of Appeal. Only the parties were signatories thereto; Atty. Mena's signature was missing, which gives credence to petitioners' assertion that they had already terminated the services of their counsel at that time. Their new counsel, Atty. Dauphine B. Go, DAR-Legal Counsel, entered her appearance only on March 13, 2003, or several days after the Notices of Appeal were filed.[36]

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[35] Section 6. Appeal Memorandum. Upon perfection of the appeal, the Adjudicator shall issue an order requiring the appellant to file an appeal memorandum within ten (10) days from receipt of such order, furnishing a copy thereof to the appellee and his counsel who may reply thereto if he so desires, within the same period of time. The parties may also submit a draft decision desired. After the filing of their respective appeal memoranda or lapse of the period within which to file them, the entire records of the case shall be elevated on appeal to the Board within five (5) days therefrom.

x x x x x x x x x

(Rule XII, 1994 DARAB Rules of Procedure)

[36] DARAB records, pp. 365-364.

The Regional Adjudicator is also correct when she ruled that she has no power to determine if the appeal is frivolous and intended merely for delay. Such matters are for the appellate body to determine after it has studied the appellant's brief or the appeal memorandum. The body which rendered the appealed decision should not pass upon the question of whether the appeal was taken manifestly for delay because such determination belongs to the appellate body.[37] For the lower body to do so would constitute a review of its own judgment and a mockery of the appellate process. This principle is applicable to agrarian disputes by virtue of Section 8, Rule XIII of the DARAB Rules which states that the Board (not the Regional Adjudicator) has the power to impose reasonable penalties, including fine or censure, on parties who file frivolous or dilatory appeals. The implication is that since the Board is the one which has the power to punish, it is also the one which has the power to decide if there has been a violation. The Regional Adjudicator has no such power. She must allow the appeal if it is timely and compliant with the reglementary requirements. It has been held that when an appeal is filed on time, the approval of a notice of appeal is a ministerial duty of the court or tribunal which rendered the decision.[38]

Effect of "forgery" on the March 5, 2003 Notice of Appeal

Respondents claim, and the CA has ruled, that the March 5, 2003 Notice of Appeal (filed by the second group) was a "forgery" and thus void, because it bore signatures above the names of the deceased Avelino and Pedro, which were obviously not written by the decedents themselves.

First of all, we have to point out that the confusion in this case was brought about by respondents themselves when they

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[37] See *Dasalla v. Hon. Judge Caluag*, 118 Phil. 663, 666 (1963); *ITT Philippines, Inc, v. Court of Appeals*, 160-A Phil. 582, 588 (1975); *Ortigas & Company Limited Partnership v. Velasco*, G.R. No. 109645, July 25, 1994, 234 SCRA 455, 495.

[38] See *Oro v. Judge Diaz*, 413 Phil. 419, 426 (2001).

included in their complaint two defendants who were already dead. Instead of impleading the decedent's heirs and current occupants of the landholding, respondents filed their complaint against the decedents, contrary to the following provision of the 1994 DARAB Rules of Procedure:

RULE V
PARTIES, CAPTION AND SERVICE OF PLEADINGS

SECTION 1. Parties in Interest. Every agrarian case must be initiated and defended *in the name of the real party in interest. x x x*

A real party in interest is defined as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of a suit."[39] The real parties in interest, at the time the complaint was filed, were no longer the decedents Avelino and Pedro, but rather their respective heirs who are entitled to succeed to their rights (whether as agricultural lessees or as farmers-beneficiaries) under our agrarian laws.[40] They are the ones who, as heirs of the decedents and actual tillers, stand to be removed from the landholding and made to pay back rentals to respondents if the complaint is sustained.

Since respondents failed to correct their error (they did not amend the erroneous caption of their complaint to include the real parties-in-interest), they cannot be insulated from the confusion which it engendered in the proceedings below. But at any rate, notwithstanding the erroneous caption and the

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[39] RULES OF COURT, Rule III, Section 2. The DARAB Rules itself does not define a real party-in-interest.

[40] Section 9 of Republic Act No. 3844, as amended (the Code of Agrarian Reform), provides that in case of the death of the agricultural lessee, the leasehold continues between the lessor and the deceased lessee's heirs in the order specified therein. Similarly, per Presidential Decree No. 27 (Decreeing the Emancipation of Tenants), which is invoked by petitioners, title to land acquired thereunder is transferable by hereditary succession in accordance with the Code of Agrarian Reform, among other laws. Even Republic Act No. 6657, as amended (Comprehensive Agrarian Reform Law), also recognizes the right of the heirs to succeed to the rights of their predecessor-farmer-beneficiary (Section 27).

absence of a formal substitution of parties, jurisdiction was acquired over the heirs of Avelino and Pedro who voluntarily participated in the proceedings below. This Court has ruled that formal substitution of parties is not necessary when the heirs themselves voluntarily appeared, participated, and presented evidence during the proceedings.[41]

Going now to the alleged "forgery", it is clear from the records that there was never an instant when the respondents (and the Regional Adjudicator) were deceived or made to believe that Avelino and Pedro were still alive and participating in the proceedings below. In fact, respondents were clearly aware that the two were already deceased such that they even indicated the names of the respective heirs in their position paper before the Regional Adjudicator:

> Plaintiffs are the agricultural lessors of the following tenant-lessees in the subject landholding primarily devoted to rice production, namely: x x x Pedro Bernardo (deceased), *substituted by Roberto Bernardo*, Antonio Mananghaya (deceased) substituted by Mariano, Faustino, and Tranquilino all surnamed Mananghaya, x x x Avelino Santos (deceased) *substituted by Delfin Sacdalan* x x x.[42]

Respondents also never questioned the appearance and participation of the heirs — Roberto and Delfin — in the proceedings below. The parties, as well as the Regional Adjudicator, were all aware of the death of Avelino and Pedro, and of the fact that the complaint (and its corresponding prayer for ejectment) is now directed against their heirs.

Therefore, it is unquestionable that when the heirs of Avelino and Pedro signed the Notice of Appeal, they did not intend, and could not have intended, to visit fraud upon the proceedings. Indeed, any intention to mislead is simply negated by their ready admission and participation in the proceedings *as heirs* of Avelino and Pedro. Thus, there can be no deception or prejudice, as

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[41] *Torres, Jr. v. Court of Appeals,* 344 Phil. 348, 366-367 (1997), citing *Vda. de Salazar v. Court of Appeals,* 320 Phil. 373, 377-380 (1995).

[42] Plaintiff's Position Paper, DARAB records, p. 162.

there were prior repeated disclosures that the named defendants were already dead.

Respondents insist that allowing the appeal would condone an act which is criminal in nature. We do not agree. Article 3 of the Revised Penal Code (RPC) provides that malice or criminal intent (*dolo*) is an essential requisite of all crimes and offenses defined therein.[43] The circumstances narrated above do not indicate the presence of *dolo*. In this regard, it should be noted that the heirs who signed the Notice of Appeal are lay persons unfamiliar with the technical requirements of procedure and pleadings. This unfamiliarity, compounded by the absence of legal counsel, appears to have caused the imperfections in their signing of the Notice of Appeal. We do not see any criminal intent motivating them.

Moreover, in cases of falsification of public documents, such as documents introduced in judicial proceedings, "the change in the public document must be such as to *affect the integrity* of the same or *change the effects* which it would otherwise produce; for, unless that happens, there could not exist the essential element of the intent to commit the crime, which is required by Article 3 of the Penal Code."[44] In the instant case, given the heirs' admissions contained in several pleadings that Avelino and Pedro are already deceased and their submission to the jurisdiction of the Regional Adjudicator as the successors-in-interest of the decedents, the effect would be the same if the heirs did not sign the decedents' names but their own names on the appeal. As the recognized *real* parties in interest, the case actually proceeded against the heirs and the judgment rendered was executed against them. It was thus unnecessary for the heirs to sign the decedents' names when their own names, as

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[43] Except in those cases where the element required is negligence or *culpa*.

[44] *Beradio v. Court of Appeals*, 191 Phil. 153, 168 (1981). See also *People v. Pacana*, 47 Phil. 48, 55-56 (1924); *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 904-905 (1999); *Luague v. Court of Appeals*, 197 Phil. 784, 788 (1982).

the real parties in interest, would have served the same purpose just as effectively.

Given the foregoing circumstances, we conclude that the unfortunate matter of signing the decedents' names in the Notice of Appeal is an innocent and harmless error on the part of the heirs.

Respondents' own procedural errors

At this juncture, we must point out that while respondents bewail petitioners' lack of strict adherence to procedural rules, they also failed to observe some rules. It is evident from the records that respondents filed two motions for reconsideration after the August 5, 2003 Order of the Regional Adjudicator. This is prohibited under Section 12, Rule VIII of DARAB Rules, which provides that only one motion for reconsideration shall be allowed.

Moreover, respondents failed to exhaust administrative remedies[45] when they filed their petition for *certiorari* before the CA, instead of the Board.[46] The DARAB Rules state that:

Rule XIV
JUDICIAL REVIEW

Section 1. *Certiorari* to the Court of Appeals. Any decision, order, resolution, award or ruling *of the Board* on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari.*

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[45] What could have been a fatal error in its petition for *certiorari* before the appellate court was entirely ignored because petitioners herein did not raise it as an issue. It is doctrinal that non-exhaustion of administrative remedies can be waived (see *Rosario v. Court of Appeals*, G.R. No. 89554, July 10, 1992, 211 SCRA 384, 387).

[46] *Department of Agrarian Reform Adjudication Board v. Court of Appeals*, 334 Phil. 369, 381-382 (1997).

An aggrieved party can only resort to judicial review *after* it has invoked the authority of the Board. Judicial review is not provided for orders, rulings, and decisions of adjudicators. It is stated in Section 1, Rule II that the Board has *primary and exclusive*, original and *appellate* jurisdiction over agrarian disputes involving agrarian laws and *their implementing rules and regulations*. If respondents were strict adherents to procedural rules, they should have followed Section 2(b) of Rule XIII which provides for an appeal to the Board on the ground of *grave abuse of discretion* on the part of the adjudicator.

These matters, while not raised by the parties, are important considerations in resolving the case where one party laments that she is prejudiced by the leniency that is afforded to the other party. It should be made clear that there was no partiality or undue advantage given to petitioners that had not likewise been enjoyed by respondents.

Allegation that the basis for the Regional Adjudicator's Decision is an utter fabrication

Petitioners also raise for the first time in the entire proceedings of this case that respondents had presented to the Regional Adjudicator an entirely spurious and fabricated DAR Order exempting respondents' landholdings from the coverage of CARP. It will be recalled that the Regional Adjudicator's decision below is based on the assumption that respondents' landholdings are exempt from CARP coverage, hence the obligation on the part of petitioners to pay lease rentals.

Petitioners maintain that they only discovered the spurious nature of the exemption order during the pendency of their appeal to this Court. They presented several certificates from various DAR offices stating that the latter have no record of the said exemption order in favor of respondents. If such exemption order is indeed fabricated, their possession of CLTs and EPs should be respected, thus they should be held under no obligation to pay rentals to respondents. Thus, they seek the nullification of the exemption order on the ground that it is counterfeit.

On the other hand, respondents assert that the validity of the exemption order had already been settled in the annulment case filed by petitioners against respondents in 1994, docketed as DARAB Case No. 602-B-94. They likewise maintain that the issue involves factual matters which are not within the province of the Supreme Court.

DARAB Case No. 602-B '94 is a complaint for annulment of the regional director's order, which granted respondents' petition for the exemption of their landholdings from the coverage of the CARP. In that case, petitioners assailed the validity of the order on the ground that they were not given an opportunity to present controverting evidence and that the title of petitioners to the land was not registered within the period prescribed by law.

Their complaint was dismissed on the ground of *lack of jurisdiction.* The provincial adjudicator, as later affirmed by the DARAB[47] and the CA,[48] ruled that only the Agrarian Reform Secretary has appellate jurisdiction over the exemption orders issued by a regional director.[49] Petitioners filed a petition for review before this Court but it was not timely filed. Hence, a resolution was issued where the case was deemed closed and terminated. Entry of judgment was made on September 6, 2002.

Contrary to respondents' arguments, there was never any ruling regarding the validity or authenticity of the exemption order. What was ruled upon, and became final, was that the exemption order cannot be reviewed by the provincial adjudicator or DARAB since exclusive appellate jurisdiction rests in the Office of the DAR Secretary. Thus, it appears that petitioners' right to question the *authenticity* of the exemption order in the proper forum has not yet been foreclosed.

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[47] *Rollo,* pp. 469-475.

[48] *Id.* at 476-482.

[49] *Id.* at 461-468.

The instant case, however, is not the proper place to bring the issue of authenticity.

Exemption from the comprehensive agrarian reform law is an administrative matter the primary jurisdiction over which has been lodged with the DAR Secretary.[50] Moreover, the issue of authenticity is entirely factual.[51] Since this was never raised below, we have no basis on record to rule on the authenticity of the exemption order.

A final note. After the decision was rendered by the CA, the record shows that several withdrawals of appeal were allegedly filed with the Office of the Regional Agrarian Reform Adjudicator. This new development, however, was not raised by the parties in their memoranda before the Court. For this reason and because of the necessity of verifying the authenticity, voluntariness, and the personalities of the parties that signed the withdrawals of appeal, the Court deems it prudent to leave the matter for the Board that would hear the appeal.

WHEREFORE, the instant petition is *GRANTED* and the assailed June 9, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 79304, which gave no legal effect to petitioners' Notices of Appeal, is hereby *ANNULLED and SET ASIDE*. The August 5, 2003 Order of the Regional Adjudicator giving due course to the two Notices of Appeal is *REINSTATED*. Let the records of the case be transmitted forthwith to the Adjudication

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[50] Section 13 of DAR Administrative Order No. 02, series of 2003 (2003 RULES AND PROCEDURES GOVERNING LANDOWNER RETENTION RIGHTS) provides for appeals from the decisions of the Regional Director regarding retention applications to the Secretary. The procedure for such appeals is provided in DAR Administrative Order No. 3, series of 2003 (2003 RULES OF AGRARIAN LAW IMPLEMENTATION CASES), which also provides in Section 10 thereof that, "The Secretary shall exercise appellate jurisdiction over all cases, and may delegate the resolution of appeals to any Undersecretary."

[51] See *Guevarra v. Court of Appeals,* G.R. No. 100894, January 26, 1993, 217 SCRA 550, 553.

Board which is *DIRECTED* to proceed to dispose of the appeal with deliberate dispatch.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 177114. April 13, 2010]

MANOLO A. PEÑAFLOR, *petitioner, vs.* **OUTDOOR CLOTHING MANUFACTURING CORPORATION, NATHANIEL T. SYFU, President, MEDYLENE M. DEMOGENA, Finance Manager, and PAUL LEE, Chairman,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN IT ARISES. — While the letter states that Peñaflor's resignation was irrevocable, it does not necessarily signify that it was also voluntarily executed. Precisely because of the attendant hostile and discriminatory working environment, Peñaflor decided to permanently sever his ties with Outdoor Clothing. This falls squarely within the concept of constructive dismissal that jurisprudence defines, among others, as involuntarily resignation due to the harsh, hostile, and unfavorable conditions set by the employer. It arises when a clear discrimination, insensibility, or disdain by an employer exists and has become unbearable to the employee. The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. With the appointment of Buenaobra to the position he then still occupied, Peñaflor felt that he was being eased out and this perception made him decide to leave the company.

2. ID.; ID.; ID.; THE RESIGNATION OF THE EMPLOYEE DOES NOT SHIFT THE BURDEN OF PROVING THAT THE EMPLOYEE'S DISMISSAL WAS FOR A JUST AND VALID CAUSE FROM THE EMPLOYER TO THE EMPLOYEE. — The fact of filing a resignation letter alone does not shift the burden of proving that the employee's dismissal was for a just and valid cause from the employer to the employee. In *Mora v. Avesco*, we ruled that should the employer interpose the defense of resignation, it is still incumbent upon the employer to prove that the employee voluntarily resigned. To our mind, Outdoor Clothing did not discharge this burden by belatedly presenting the three memoranda it relied on. If these memoranda were authentic, they would have shown that Peñaflor's resignation preceded the appointment of Buenaobra. Thus, they would be evidence supporting the claim of voluntariness of Peñaflor's resignation and should have been presented early on in the case – any lawyer or layman by simple logic can be expected to know this. Outdoor Clothing however raised them only before the NLRC when they had lost the case before the labor arbiter and now conveniently attributes the failure to do so to its former counsel. Outdoor Clothing's belated explanation, as expressed in its motion for reconsideration, to our mind, is a submission we cannot accept for serious consideration. We find it significant that Peñaflor attacked the belated presentation of these memoranda in his Answer to Outdoor Clothing's Memoranda of Appeal with the NLRC, but records do not show that Outdoor Clothing ever satisfactorily countered Peñaflor's arguments. It was not until we pointed out Outdoor Clothing's failure to explain its belated presentation of the memoranda in our January 21, 2010 decision that Outdoor Clothing offered a justification.

3. ID.; ID.; ID.; ID.; ANY DOUBT ON THE CREDIBILITY OF THE PARTIES' EVIDENCE SHOULD BE SETTLED IN FAVOR OF THE WORKING MAN. — Whatever doubts that remain in our minds on the credibility of the parties' evidence should, by the law's dictate, be settled in favor of the working man. Our ruling that Peñaflor was constructively dismissed from his employment with Outdoor Clothing therefore stands.

4. ID.; ID.; ID.; ABSENT MALICE OR BAD FAITH, THE DIRECTORS AND OFFICERS OF THE CORPORATION ARE NOT SOLIDARILY LIABLE WITH THE

CORPORATION FOR THE ILLEGAL TERMINATION OF THE EMPLOYEE. — We modify, however, our ruling on the extent of liability of Outdoor Clothing and its co-respondents. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith. In the present case, malice or bad faith on the part of the Syfu, Demogena, and Lee, as corporate officers of Outdoor Clothing, was not sufficiently proven to justify a ruling holding them solidarily liable with Outdoor Clothing.

APPEARANCES OF COUNSEL

Vicente S. Pulido for petitioner.

Kho Bustos Malcontento Argosino Law Offices for respondents.

R E S O L U T I O N

BRION, *J.*:

In our Decision of January 21, 2010, we granted petitioner Manolo Peñaflor's (*Peñaflor*) petition for review on *certiorari* and reversed the Court of Appeals (*CA*) decision of December 29, 2006 and resolution of March 14, 2007. We found that Peñaflor had been constructively dismissed from his employment with respondent Outdoor Clothing Manufacturing Corporation (*Outdoor Clothing*). Outdoor Clothing now seeks a reconsideration of this ruling.

FACTUAL BACKGROUND

Peñaflor was hired as probationary HRD Manager of Outdoor Clothing on September 2, 1999. On March 13, 2000, more than six months from the time he was hired, Peñaflor learned that Outdoor Clothing's President, Nathaniel Syfu (*Syfu*), appointed Edwin Buenaobra (*Buenaobra*) as the concurrent HRD

and Accounting Manager. After enduring what he claimed as discriminatory treatment at work, Peñaflor considered the appointment of Buenaobra to his position as the last straw, and thus filed his irrevocable resignation from Outdoor Clothing effective at the close of office hours on March 15, 2000. He thereafter filed an illegal dismissal complaint with the labor arbiter claiming that he had been constructively dismissed. The labor arbiter agreed with Peñaflor and issued a decision in his favor on August 15, 2001.

On appeal, the National Labor Relations Commission (*NLRC*) reversed the labor arbiter's ruling in its September 24, 2002 decision. When Peñaflor questioned the NLRC's decision before the CA, the appellate court affirmed the NLRC's decision. Hence, Peñaflor filed a petition for review on *certiorari* with the Court.

The Court's January 21, 2010 Decision

Our January 21, 2010 decision focused on resolving the issue of ***whether Peñaflor's resignation from Outdoor Clothing was voluntary or a forced one***, the latter making it a constructive dismissal equivalent to an illegal dismissal. We found it crucial to determine ***whether Peñaflor filed his resignation letter before or after the appointment of Buenaobra as concurrent HRD and Accounting Manager***. If the resignation was submitted **before** Syfu's appointment of Buenaobra, little support would exist for Peñaflor's allegation of constructive dismissal, as the appointment would merely be intended to cover the vacancy created by Peñaflor's resignation. If however the resignation was made **after** the appointment of Buenaobra, then factual basis exists to consider Peñaflor as constructively dismissed by Outdoor Clothing, as the resignation would be a response to the unacceptable appointment of another person to a position he still occupied.

Peñaflor claimed that he filed his *undated* resignation letter on the very same date he made his resignation effective — March 15, 2000. On the other hand, Outdoor Clothing contended that the letter was submitted on March 1, 2000. In support of this allegation, Outdoor Clothing presented three memoranda:

a. the March 1, 2000 memorandum from Syfu to Buenaobra appointing the latter as the concurrent HRD and Accounting Manager;

b. the March 3, 2000 memorandum from Buenaobra to Syfu accepting the appointment; and

c. the March 10, 2000 office memorandum from Syfu informing all concerned of Buenaobra's new appointment.

Our analysis of the records led us to conclude that Peñaflor submitted his resignation on March 15, 2000 as a response to the appointment of Buenaobra to his post.

We considered suspicious Outdoor Clothing's above memoranda because these were only presented to the NLRC on appeal, but not before the labor arbiter. They were not even mentioned in Outdoor Clothing's position paper filed with the labor arbiter. The failure to present them and to justify this failure are significant considering that these are clinching pieces of evidence that allowed the NLRC to justify the reversal of the labor arbiter's decision.

The surrounding circumstances of the issuance of these memoranda also cast doubts on their authenticity. Although the memoranda directly concerned Peñaflor, he was never informed of their contents nor given copies. While the March 10, 2000 memorandum bore signatures of its recipients, there were no marks on the March 1 and 3, 2000 memoranda indicating that their intended recipients actually received them on the date they were issued. It was likewise strange that Peñaflor's resignation and Buenaobra's appointment would be kept under wraps from the supposed filing of Peñaflor's resignation letter on March 1, 2000 up to Syfu's issuance of the March 10, 2000 office memorandum, since the turnover of responsibilities and work load alone to a successor in a small company such as Outdoor Clothing would have prevented the resignation from being kept a secret.

We also considered the timeliness of Peñaflor's resignation. **It was highly unlikely for Peñaflor to resign on March 1,**

2000, as claimed by Outdoor Corporation, considering that he would have become a regular employee by that time. It did not appear logical that an employee would tender his resignation on the very same day he was entitled by law to be considered a regular employee, especially when downsizing was taking place and he could have availed of its benefits if separated from the services as a regular employee.

Considering the above circumstances, and applying basic labor law principles, the Court ruled that Peñaflor was constructively dismissed from his employment with Outdoor Clothing. We thus reversed the CA's decision and resolution and reinstated the decision of the labor arbiter which found the respondents (Outdoor Clothing and its corporate officers) jointly and severally liable to pay Peñaflor backwages, illegally deducted salaries, proportionate 13th month pay, attorney's fees, moral and exemplary damages.

THE MOTION FOR RECONSIDERATION

Outdoor Clothing now moves for the reconsideration of the Court's January 21, 2010 Decision. It alleges that the Court erred in declaring that Peñaflor was constructively dismissed from his employment despite his submission of an "irrevocable resignation" letter. It also claims that the Court erred in holding all the respondents jointly and severally liable to pay Peñaflor the salaries and damages awarded in his favor.

Outdoor Clothing maintains that Peñaflor's resignation was voluntary; Peñaflor resigned because he wanted to disassociate himself from a company that was experiencing severe financial difficulty and to focus on his teaching job. Indeed, Peñaflor's own letter stating his decision to ***irrevocably*** **resign** from his employment with Outdoor Clothing was a clear indication that he was not forced to leave the company.

Outdoor Clothing also relies heavily on the three memoranda it presented before the NLRC to support its claim of Peñaflor's voluntary resignation. Although belatedly filed, Outdoor Clothing claims there is nothing in the rules which disallows the filing of new documents before the NLRC. "Submission of additional

documents, albeit belatedly done, should always be looked upon with liberality especially when the same was important for any factual determination of the case."[1]

Since it was Peñaflor who filed the resignation letter, Outdoor Clothing posits that the burden of proving that the resignation was involuntary rests on Peñaflor. The evidence presented by Peñaflor simply failed to overcome this burden and thus, his resignation should be deemed voluntary and should absolve Outdoor Clothing of any liability for illegal dismissal.

Additionally, Outdoor Clothing asserts that the Court erred in reinstating the labor arbiter's decision which ordered all the respondents *jointly and severally* liable for the sums due to Peñaflor. There was nothing in the decision of the Court or even those of the CA and the administrative bodies finding Outdoor Clothing's corporate officers Syfu, Medylene Demogena (*Demogena*), and Paul Lee (*Lee*) to have personally acted in bad faith or with malice with respect to Peñaflor's resignation. Assuming Outdoor Clothing is indeed liable to Peñaflor for illegal dismissal, it would be legally out of line to consider its corporate officers solidarily liable with the company without a finding of bad faith or malice on their part.

THE COURT'S RULING

Other than the issue of solidary liability of the respondents in the present case, Outdoor Clothing raises no new matter that would merit a reconsideration of the Court's January 21, 2010 Decision.

Peñaflor's resignation letter read:

Mr. Nathaniel Y. Syfu
Chief Corporate Officer
Outdoor Clothing Manufacturing Corporation

Sir:

Please accept my irrevocable resignation effective at the close of office on March 15, 2000.

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[1] *Rollo*, p. 238.

Thank you.

Very truly yours,

Manolo A. Peñaflor[2]

While the letter states that Peñaflor's resignation was irrevocable, it does not necessarily signify that it was also voluntarily executed. Precisely because of the attendant hostile and discriminatory working environment, Peñaflor decided to permanently sever his ties with Outdoor Clothing. This falls squarely within the concept of constructive dismissal that jurisprudence defines, among others, as involuntarily resignation due to the harsh, hostile, and unfavorable conditions set by the employer. It arises when a clear discrimination, insensibility, or disdain by an employer exists and has become unbearable to the employee.[3] The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances.[4] With the appointment of Buenaobra to the position he then still occupied, Peñaflor felt that he was being eased out and this perception made him decide to leave the company.

The fact of filing a resignation letter alone does not shift the burden of proving that the employee's dismissal was for a just and valid cause from the employer to the employee. In *Mora v. Avesco*,[5] we ruled that should the employer interpose the defense of resignation, it is still incumbent upon the employer to prove that the employee voluntarily resigned. To our mind, Outdoor Clothing did not discharge this burden by belatedly presenting the three memoranda it relied on. If these memoranda were authentic, they would have shown that Peñaflor's resignation preceded the appointment of Buenaobra. Thus, they would be

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[2] CA *rollo*, p. 203.

[3] *Gilles v. Court of Appeals*, G.R. No. 149273, June 5, 2009.

[4] *Siemens Philippines, Inc. v. Domingo*, G.R. No. 150488, July 28, 2008, 560 SCRA 86.

[5] G.R. No. 177414, November 14, 2008, 571 SCRA 226.

evidence supporting the claim of voluntariness of Peñaflor's resignation and should have been presented early on in the case — any lawyer or layman by simple logic can be expected to know this. Outdoor Clothing however raised them only before the NLRC when they had lost the case before the labor arbiter and now conveniently attributes the failure to do so to its former counsel. Outddor Clothing's belated explanation as expressed in its motion for reconsideration, to our mind, is a submission we cannot accept for serious consideration. We find it significant that Peñaflor attacked the belated presentation of these memoranda in his Answer to Outdoor Clothing's Memoranda of Appeal with the NLRC, but records do not show that Outdoor Clothing ever satisfactorily countered Peñaflor's arguments. It was not until we pointed out Outdoor Clothing's failure to explain its belated presentation of the memoranda in our January 21, 2010 decision that Outdoor Clothing offered a justification.

Whatever doubts that remain in our minds on the credibility of the parties' evidence should, by the law's dictate, be settled in favor of the working man. Our ruling that Peñaflor was constructively dismissed from his employment with Outdoor Clothing therefore stands.

We modify, however, our ruling on the extent of liability of Outdoor Clothing and its co-respondents. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith. In the present case, malice or bad faith on the part of the Syfu, Demogena, and Lee, as corporate officers of Outdoor Clothing, was not sufficiently proven to justify a ruling holding them solidarily liable with Outdoor Clothing.[6]

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[6] *Supra* note 2.

WHEREFORE, we *PARTIALLY GRANT* respondents' motion for reconsideration and *MODIFY* our Decision dated January 21, 2010. Respondent Outdoor Clothing is hereby ordered to pay petitioner the following:

a. **backwages** computed from the time of constructive dismissal up to the time of the finality of the Court's Resolution;

b. **separation pay**, due to the strained relations between the parties, equivalent to the petitioner's one month's salary;

c. **illegally deducted salary for six days**, as computed by the labor arbiter;

d. proportionate 13th month pay;

e. attorney's fees, moral and exemplary damages in the amount of ₱100,000.00; and

f. costs against the respondent corporation.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183572. April 13, 2010]

YOLANDA M. MERCADO, CHARITO S. DE LEON, DIANA R. LACHICA, MARGARITO M. ALBA, JR., and FELIX A. TONOG, *petitioners, vs.* **AMA COMPUTER COLLEGE-PARAÑAQUE CITY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT OF APPEALS ONLY EXAMINES THE FACTUAL FINDINGS OF THE NLRC TO DETERMINE WHETHER OR NOT THE CONCLUSIONS THEREOF ARE SUPPORTED BY SUBSTANTIAL EVIDENCE WHOSE ABSENCE POINTS TO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— We agree with the petitioners that, as a rule in *certiorari* proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh each piece of evidence introduced in the case. The CA only examines the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction. In the recent case of *Protacio v. Laya Mananghaya & Co.*, we emphasized that: As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. **However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.** [O]ur review of the records and of the CA decision shows that the CA erred in recognizing that grave abuse of discretion attended the NLRC's conclusion that the petitioners were illegally dismissed. Consistent with this conclusion, the evidence on record show that AMACC failed to discharge its burden of proving by substantial evidence the *just cause* for the non-renewal of the petitioners' contracts.

2. ID.; ID.; ID.; DISTINGUISHED FROM RULE 45 REVIEW OF THE COURT OF APPEALS RULING IN LABOR CASES.— In *Montoya v. Transmed Manila Corporation*, we laid down our basic approach in the review of Rule 65 decisions of the CA in labor cases, as follows: In a Rule 45 review, we

consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**

3. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT OF ACADEMIC PERSONNEL; PROBATIONARY EMPLOYMENT; PROBATIONARY PERIOD FOR ACADEMIC PERSONNEL, RULE.— A reality we have to face in the consideration of employment on probationary status of teaching personnel is that they are not governed purely by the Labor Code. The Labor Code is ***supplemented*** with respect to the period of probation by special rules found in the Manual of Regulations for Private Schools. On the matter of ***probationary period***, Section 92 of these regulations provides: Section 92. *Probationary Period.* — **Subject in all instances to compliance with the Department and school requirements**, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and **nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.** The CA pointed this out in its decision (as the NLRC also did), and we confirm the correctness of this conclusion. Other than on the period, the following quoted portion of Article 281 of the Labor Code still fully applies: x x x The services of an

employee who has been engaged on a probationary basis may be terminated ***for a just cause*** when he fails to qualify as a regular employee in accordance with ***reasonable standards made known by the employer to the employee at the time of his engagement***. An employee who is allowed to work after a probationary period shall be considered a regular employee. [Emphasis supplied]

4. ID.; ID.; ID.; FIXED-TERM EMPLOYMENT IN THE TEACHING PROFESSION, AN ACCEPTED PRACTICE; ELABORATED.— The use of employment for fixed periods during the teachers' probationary period is likewise an accepted practice in the teaching profession. We mentioned this in passing in *Magis Young Achievers' Learning Center v. Adelaida P. Manalo,* albeit a case that involved elementary, not tertiary, education, and hence spoke of a school year rather than a semester or a trimester. We noted in this case: **The common practice is for the employer and the teacher to enter into a contract, effective for one school year.** At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year — since it would be the third school year — of probationary employment. **At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract.** It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status. It is important that the contract of probationary employment specify

the period or term of its effectivity. The failure to stipulate its precise duration could lead to the inference that the contract is binding for the full three-year probationary period. We have long settled the validity of a fixed-term contract in the case *Brent School, Inc. v. Zamora* that AMACC cited. Significantly, *Brent* happened in a school setting. Care should be taken, however, in reading *Brent* in the context of this case as *Brent* did not involve any probationary employment issue; it dealt purely and simply with the validity of a fixed-term employment under the terms of the Labor Code, then newly issued and which does not expressly contain a provision on fixed-term employment.

5. POLITICAL LAW; CONSTITUTIONAL LAW; ACADEMIC FREEDOM; ELABORATED; THE PREROGATIVE OF THE SCHOOL TO SET HIGH STANDARDS OF EFFICIENCY FOR ITS TEACHERS IS IN ACCORDANCE WITH THE SCHOOL'S RIGHT TO ACADEMIC FREEDOM.— Last but not the least factor in the academic world, is that a school enjoys academic freedom – a guarantee that enjoys protection from the Constitution no less. Section 5(2) Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. The institutional academic freedom includes the right of the school or college to decide and adopt its aims and objectives, and to determine how these objections can best be attained, free from outside coercion or interference, save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompass the freedom of the school or college to determine for itself: (1) who may teach; (2) who may be taught; (3) how lessons shall be taught; and (4) who may be admitted to study. AMACC's right to academic freedom is particularly important in the present case, because of the new screening guidelines for AMACC faculty put in place for the school year 2000-2001. We agree with the CA that AMACC has the inherent right to establish high standards of competency and efficiency for its faculty members in order to achieve and maintain academic excellence. The school's prerogative to provide standards for its teachers and to determine whether or not these standards have been met is in accordance with academic freedom that gives the educational institution the right to choose who should teach. In *Peña v. National Labor*

Relations Commission, we emphasized: It is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside. Schools cannot be required to adopt standards which barely satisfy criteria set for government recognition.

6. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT OF ACADEMIC PERSONNEL; PROBATIONARY EMPLOYMENT; THE AUTHORITY OF THE SCHOOL TO DECIDE THE TERMS AND CONDITIONS FOR HIRING ITS TEACHER IS COVERED AND PROTECTED BY ITS MANAGEMENT PREROGATIVE.— The same academic freedom grants the school the autonomy to decide for itself the terms and conditions for hiring its teacher, subject of course to the overarching limitations under the Labor Code. Academic freedom, too, is not the only legal basis for AMACC's issuance of screening guidelines. The authority to hire is likewise covered and protected by its management prerogative – the right of an employer to regulate all aspects of employment, such as hiring, the freedom to prescribe work assignments, working methods, process to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. Thus, AMACC has every right to determine for itself that it shall use fixed-term employment contracts as its medium for hiring its teachers. It also acted within the terms of the Manual of Regulations for Private Schools when it recognized the petitioners to be merely on probationary status up to a maximum of nine trimesters.

7. ID.; ID.; ID.; ID.; MANAGEMENT IS GIVEN THE WIDEST OPPORTUNITY DURING PROBATIONARY PERIOD TO REJECT HIREES WHO FAIL TO MEET ITS OWN ADOPTED BUT REASONABLE STANDARDS; TERMINATION OF THE EMPLOYMENT OF TEACHER ON PROBATIONARY STATUS, GROUNDS.— The provision on employment on probationary status under the Labor Code is a primary example of the fine balancing of interests between labor and management that the Code has institutionalized pursuant to the underlying intent of the Constitution. On the one hand, employment on probationary status affords

management the chance to fully scrutinize the true worth of hired personnel before the full force of the security of tenure guarantee of the Constitution comes into play. Based on the standards set at the start of the probationary period, management is given the widest opportunity during the probationary period to reject hirees who fail to meet *its own adopted but reasonable standards*. These standards, together with *the just and authorized causes for termination of employment the Labor Code expressly provides*, are the grounds available to terminate the employment of a teacher on probationary status. For example, the school may impose reasonably stricter attendance or report compliance records on teachers on probation, and reject a probationary teacher for failing in this regard, although the same attendance or compliance record may not be required for a teacher already on permanent status. At the same time, the same just and authorizes causes for dismissal under the Labor Code apply to probationary teachers, so that they may be the first to be laid-off if the school does not have enough students for a given semester or trimester. Termination of employment on this basis is an authorized cause under the Labor Code.

8. ID.; ID.; ID.; ID.; SCHOOL STANDARDS SHOULD BE MADE KNOWN TO THE TEACHERS AT THE START OF THEIR PROBATIONARY PERIOD OR AT THE START OF THE SEMESTER OR THE TRIMESTER DURING WHICH THE PROBATIONARY STANDARDS ARE TO BE APPLIED.— Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, *and to be judged on the basis of these standards*, aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these standards should be made known to the teachers on probationary status at the start of their probationary period, or at the very least under the circumstances of the present case, at the start of the semester or the trimester during which the probationary standards are to be applied. *Of critical importance in invoking a failure to meet the probationary standards, is that the school should show — **as a matter of due process** — how these standards have been applied.* This is effectively the second notice in a dismissal situation that the law requires as a due process

guarantee supporting the security of tenure provision, and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal. These rules ensure compliance with the limited security of tenure guarantee the law extends to probationary employees.

9. ID.; ID.; ID.; FIXED-TERM EMPLOYMENT DISTINGUISHED FROM EMPLOYMENT ON PROBATIONARY STATUS; PROBATIONARY PERIOD CAN ONLY LAST FOR A SPECIFIC MAXIMUM PERIOD AND UNDER REASONABLE, WELL-LAID AND PROPERLY COMMUNICATED STANDARDS.— When fixed-term employment is brought into play under the probationary period rules, the situation – as in the present case — may at first blush look muddled as fixed-term employment is in itself a valid employment mode under Philippine law and jurisprudence. The conflict, however, is more apparent than real when the respective nature of fixed-term employment and of employment on probationary status are closely examined. The fixed-term character of employment essentially refers ***to the period*** agreed upon between the employer and the employee; employment exists only for the duration of the term and ends on its own when the term expires. In a sense, employment on probationary status also refers to a period because of the technical meaning "*probation*" carries in Philippine labor law – a maximum period of six months, or in the academe, a period of three years for those engaged in teaching jobs. Their similarity ends there, however, because of the overriding meaning that being "*on probation*" connotes, *i.e.*, a process of testing and observing the character or abilities of a person who is new to a role or job. Understood in the above sense, the *essentially protective character of probationary status for management* can readily be appreciated. But this same protective character gives rise to the countervailing but equally protective rule that the probationary period can only last for a specific maximum period and under reasonable, well-laid and properly communicated standards. Otherwise stated, within the period of the probation, any employer move *based on the probationary standards* and affecting the continuity of the employment must strictly conform to the probationary rules.

10. ID.; ID.; ID.; WHERE THE PROBATIONARY STATUS OVERLAPS WITH A FIXED-TERM CONTRACT NOT

SPECIFICALLY USED FOR THE FIXED TERM IT OFFERS, ARTICLE 281 OF THE LABOR CODE ASSUMES PRIMACY AND THE FIXED-PERIOD CHARACTER OF THE CONTRACT MUST GIVE WAY.— Under the given facts where the school year is divided into trimesters, the school apparently utilizes its fixed-term contracts as a convenient arrangement dictated by the trimestral system and not because the workplace parties really intended to limit the period of their relationship to any fixed term and to finish this relationship at the end of that term. If we pierce the veil, so to speak, of the parties' so-called fixed-term employment contracts, what undeniably comes out at the core is a fixed-term contract conveniently used by the school to define and regulate its relations with its teachers *during their probationary period*. To be sure, nothing is illegitimate in defining the school-teacher relationship in this manner. The school, however, cannot forget that its system of fixed-term contract is a system that operates during the probationary period and for this reason is subject to the terms of Article 281 of the Labor Code. ***Unless this reconciliation is made, the requirements of this Article on probationary status would be fully negated as the school may freely choose not to renew contracts simply because their terms have expired. The inevitable effect of course is to wreck the scheme that the Constitution and the Labor Code established to balance relationships between labor and management.*** Given the clear constitutional and statutory intents, we cannot but conclude that in a situation where the probationary status overlaps with a fixed-term contract *not specifically used for the fixed term it offers*, Article 281 should assume primacy and the fixed-period character of the contract must give way. This conclusion is immeasurably strengthened by the petitioners' and the AMACC's hardly concealed expectation that the employment on probation could lead to permanent status, and that the contracts are renewable unless the petitioners fail to pass the school's standards.

11. ID.; ID.; ID.; PHRASE "FIXED-TERM CONTRACT SPECIFICALLY USED FOR THE FIXED TERM IT OFFERS," EXPLAINED; DETAILS OF FINDING OF JUST CAUSE FOR THE TERMINATION OF EMPLOYMENT MUST BE COMMUNICATED TO THE TEACHERS CONCERNED.— To highlight what we mean by a fixed-term

contract *specifically used for the fixed term it offers*, a replacement teacher, for example, may be contracted for a period of one year to *temporarily* take the place of a permanent teacher on a one-year study leave. The expiration of the replacement teacher's contracted term, under the circumstances, leads to no probationary status implications as she was never employed on probationary basis; her employment is for a specific purpose with particular focus on the term and with every intent to end her teaching relationship with the school upon expiration of this term. If the school were to apply the probationary standards (as in fact it says it did in the present case), these standards must not only be reasonable but must have also been communicated to the teachers at the start of the probationary period, or at the very least, at the start of the period when they were to be applied. These terms, *in addition to those expressly provided by the Labor Code*, would serve as the just cause for the termination of the probationary contract. As explained above, the details of this finding of just cause must be communicated to the affected teachers as a matter of due process. AMACC, by its submissions, admits that it did not renew the petitioners' contracts because they failed to pass the Performance Appraisal System for Teachers (PAST) and other requirements for regularization that the school undertakes to maintain its high academic standards. The evidence is unclear on the exact terms of the standards, although the school also admits that these were standards under the Guidelines on the Implementation of AMACC Faculty Plantilla put in place at the start of school year 2000-2001.

12. ID.; ID.; ID.; ABSENT JUST CAUSE, THE TERMINATION OF THE EMPLOYMENT OF THE EMPLOYEES ON PROBATIONARY STATUS IS CONSIDERED ILLEGAL.— While we can grant that the standards were duly communicated to the petitioners and could be applied beginning the 1st trimester of the school year 2000-2001, glaring and very basic gaps in the school's evidence still exist. The exact terms of the standards were never introduced as evidence; neither does the evidence show how these standards were applied to the petitioners. Without these pieces of evidence (effectively, the finding of just cause for the non-renewal of the petitioners' contracts), we have nothing to consider and pass upon as valid or invalid *for each of the petitioners*. Inevitably, the non-renewal (or effectively,

the termination of employment of employees on probationary status) lacks the supporting finding of just cause that the law requires and, hence, is illegal. In this light, the CA decision should be reversed. Thus, the LA's decision, affirmed as to the results by the NLRC, should stand as the decision to be enforced, appropriately re-computed to consider the period of appeal and review of the case up to our level.

13. ID.; ID.; ID.; AWARD OF SEPARATION PAY IN LIEU OF REINSTATEMENT, WARRANTED.— Given the period that has lapsed and the inevitable change of circumstances that must have taken place in the interim in the academic world and at AMACC, which changes inevitably affect current school operations, we hold that — in lieu of reinstatement — the petitioners should be paid separation pay computed on a trimestral basis from the time of separation from service up to the end of the complete trimester preceding the finality of this Decision. The separation pay shall be in addition to the other awards, properly recomputed, that the LA originally decreed.

APPEARANCES OF COUNSEL

Samson S. Alcantara for petitioners.
Andres Marcelo Padernal Guerrero & Paras for respondent.

D E C I S I O N

BRION, *J.*:

The petitioners — Yolanda M. Mercado (*Mercado*), Charito S. De Leon (*De Leon*), Diana R. Lachica (*Lachica*), Margarito M. Alba, Jr. (*Alba, Jr.*,), and Felix A. Tonog (*Tonog),* all former faculty members of AMA Computer College-Parañaque City, Inc. (*AMACC*) — assail in this petition for review on *certiorari*[1] the Court of Appeals' (*CA*) decision of November 29, 2007[2]

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[1] Under Rule 45 of the RULES OF COURT.

[2] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 217-228.

and its resolution of June 20, 2008[3] that set aside the National Labor Relations Commission's (*NLRC*) resolution dated July 18, 2005.[4]

THE FACTUAL ANTECEDENTS

The background facts are not disputed and are summarized below.

AMACC is an educational institution engaged in computer-based education in the country. One of AMACC's biggest schools in the country is its branch at Parañaque City. The petitioners were faculty members who started teaching at AMACC on May 25, 1998. The petitioner Mercado was engaged as a Professor 3, while petitioner Tonog was engaged as an Assistant Professor 2. On the other hand, petitioners De Leon, Lachica and Alba, Jr., were all engaged as Instructor 1.[5] The petitioners executed individual Teacher's Contracts for each of the trimesters that they were engaged to teach, with the following common stipulation:[6]

> 1. POSITION. The TEACHER has agreed to accept a non-tenured appointment to work in the College of xxx effective xxx to xxx or **for the duration of the last term that the TEACHER is given a teaching load** based on the assignment duly approved by the DEAN/SAVP-COO. [Emphasis supplied]

For the school year 2000-2001, AMACC implemented new faculty screening guidelines, set forth in its Guidelines on the Implementation of AMACC Faculty Plantilla.[7] Under the new screening guidelines, teachers were to be hired or maintained based on extensive teaching experience, capability, potential,

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[3] *Id.* at 231-233.

[4] *Id.* at 51-59.

[5] *Id.* at 220.

[6] Annex "B", Respondent's Position Paper dated October 5, 2000; *id.* at 105-106.

[7] Annex "A", Respondent's Position Paper dated October 5, 2000; *id.* at 101-104.

high academic qualifications and research background. The performance standards under the new screening guidelines were also used to determine the present faculty members' entitlement to salary increases. **The petitioners failed to obtain a passing rating based on the performance standards; hence AMACC did not give them any salary increase.**[8]

Because of AMACC's action on the salary increases, the petitioners filed a complaint with the Arbitration Branch of the NLRC on July 25, 2000, for underpayment of wages, non-payment of overtime and overload compensation, 13th month pay, and for discriminatory practices.[9]

On September 7, 2000, the petitioners individually received a memorandum from AMACC, through Human Resources Supervisor Mary Grace Beronia, informing them that with the expiration of their contract to teach, their contract would no longer be renewed.[10] The memorandum[11] entitled "*Notice of Non-Renewal of Contract*" states in full:

> In view of the expiration of your contract to teach with AMACC-Paranaque, We wish to inform you that your contract shall no longer be renewed effective Thirty (30) days upon receipt of this notice. We therefore would like to thank you for your service and wish you good luck as you pursue your career.
>
> You are hereby instructed to report to the HRD for further instruction. Please bear in mind that as per company policy, you are required to accomplish your clearance and turn-over all documents and accountabilities to your immediate superior.
>
> For your information and guidance

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[8] *Id.* at 94.

[9] *Id.* at 220.

[10] *Ibid.*

[11] Annex "A-E", Petitioners' Position Paper dated October 10, 2000; *id.* at 82-87.

The petitioners amended their labor arbitration complaint to include the charge of illegal dismissal against AMACC. In their Position Paper, the petitioners claimed that their dismissal was illegal because it was made in retaliation for their complaint for monetary benefits and discriminatory practices against AMACC. The petitioners also contended that AMACC failed to give them adequate notice; hence, their dismissal was ineffectual.[12]

AMACC contended in response that the petitioners worked under a contracted term under a non-tenured appointment and were still within the three-year probationary period for teachers. Their contracts were not renewed for the following term because they failed to pass the Performance Appraisal System for Teachers (*PAST*) while others failed to comply with the other requirements for regularization, promotion, or increase in salary. This move, according to AMACC, was justified since the school has to maintain its high academic standards.[13]

The Labor Arbiter Ruling

On March 15, 2002, Labor Arbiter (*LA*) Florentino R. Darlucio declared in his decision[14] that the petitioners had been illegally dismissed, and ordered AMACC to reinstate them to their former positions without loss of seniority rights and to pay them full backwages, attorney's fees and 13th month pay. The LA ruled that Article 281 of the Labor Code on probationary employment

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[12] *Id.* at 75-92.

[13] *Id.* at 93-107.

[14] The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered declaring the dismissal of the complainants illegal. Respondent AMA Computer Colleges is ordered to reinstate complainants to their former position without loss of seniority rights and to pay them the following:

1. YOLANDA MERCADO:

Backwages	-	~~₱~~*478,602.72*	
13th Mo. Pay	-	*39,083.56*	
Mo. Honorarium	-	*90,000.00*	~~₱~~*607,686.28*

applied to the case; that AMACC allowed the petitioners to teach for the first semester of school year 2000-2001; that AMACC did not specify who among the petitioners failed to pass the PAST and who among them did not comply with the other requirements of regularization, promotions or increase in salary; and that the petitioners' dismissal could not be sustained on the basis of AMACC's "vague and general allegations" without substantial factual basis.[15] Significantly, the LA found no "*discrimination in the adjustments for the salary rate of the faculty members based on the performance and other qualification which is an exercise of management prerogative.*"[16] On this basis, the LA paid no heed to the claims for salary increases.

The NLRC Ruling

On appeal, the NLRC in a Resolution dated July 18, 2005[17] denied AMACC's appeal for lack of merit and affirmed *in toto*

2.	*FELIX TONOG:*			
	Backwages	-	*~~₱~~360,000.00*	
	13th Mo. Pay	-	*300,000.00*	*390,000.00*
3.	*MARGUARITO ALBA:*			
	Backwages	-	*~~₱~~234,000.00*	
	13th Month Pay	-	*19,500.00*	
	Mo. Honorarium	-	*15,840.00*	*269,340.00*
4.	*CHARITO DE LEON:*			
	(Same as Alba)			*269,340.00*
5.	*DIANA LACHICA*:			
	(Same as Alba)			*269.340.00*
			Total Award	*~~₱~~1,805,706.28*

SO ORDERED.

[15] *Id.* at 63-70.

[16] *Id.* at p. 68.

[17] Penned by Commissioner Romeo L. Go, and concurred in by Commissioners Proculo T. Sarmen and Raul T. Aquino; *id.* at 51-59.

the LA's ruling. The NLRC, however, observed that the applicable law is Section 92 of the Manual of Regulations for Private Schools (which mandates a probationary period of nine consecutive trimesters of satisfactory service for academic personnel in the tertiary level where collegiate courses are offered on a trimester basis), not Article 281 of the Labor Code (which prescribes a probationary period of six months) as the LA ruled. Despite this observation, the NLRC affirmed the LA's finding of illegal dismissal since the petitioners were terminated on the basis of standards that were only introduced near the end of their probationary period.

The NLRC ruled that the new screening guidelines for the school year 2000-2001 cannot be imposed on the petitioners and their employment contracts since the new guidelines were not imposed when the petitioners were first employed in 1998. According to the NLRC, the imposition of the new guidelines violates Section 6(d) of Rule I, Book VI of the Implementing Rules of the Labor Code, which provides that "in all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement." Citing our ruling in *Orient Express Placement Philippines v. NLRC*,[18] the NLRC stressed that the rudiments of due process demand that employees should be informed beforehand of the conditions of their employment as well as the basis for their advancement.

AMACC elevated the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. It charged that the NLRC committed grave abuse of discretion in: (1) ruling that the petitioners were illegally dismissed; (2) refusing to recognize and give effect to the petitioner's valid term of employment; (3) ruling that AMACC cannot apply the performance standards generally applicable to all faculty members; and (4) ordering the petitioners' reinstatement and awarding them backwages and attorney's fees.

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[18] G.R. No. 113713, June 11, 1997, 273 SCRA 256.

The CA Ruling

In a decision issued on November 29, 2007,[19] the CA granted AMACC's petition for *certiorari* and dismissed the petitioners' complaint for illegal dismissal.

The CA ruled that under the Manual for Regulations for Private Schools, a teaching personnel in a private educational institution (1) must be a full time teacher; (2) must have rendered three consecutive years of service; and (3) such service must be satisfactory before he or she can acquire permanent status.

The CA noted that the petitioners had not completed three (3) consecutive years of service (*i.e.* six regular semesters or nine consecutive trimesters of satisfactory service) and were still within their probationary period; their teaching stints only covered a period of two (2) years and three (3) months when AMACC decided not to renew their contracts on September 7, 2000.

The CA effectively found reasonable basis for AMACC not to renew the petitioners' contracts. To the CA, the petitioners were not actually dismissed; their respective contracts merely expired and were no longer renewed by AMACC because they failed to satisfy the school's standards for the school year 2000-2001 that measured their fitness and aptitude to teach as regular faculty members. The CA emphasized that in the absence of any evidence of bad faith on AMACC's part, the court would not disturb or nullify its discretion to set standards and to select for regularization only the teachers who qualify, based on reasonable and non-discriminatory guidelines.

The CA disagreed with the NLRC's ruling that the new guidelines for the school year 2000-2001 could not be imposed on the petitioners and their employment contracts. The appellate court opined that AMACC has the inherent right to upgrade the quality of computer education it offers to the public; part of this pursuit is the implementation of continuing evaluation and

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[19] *Rollo*, pp. 218-228.

screening of its faculty members for academic excellence. The CA noted that the nature of education AMACC offers demands that the school constantly adopt progressive performance standards for its faculty to ensure that they keep pace with the rapid developments in the field of information technology.

Finally, the CA found that the petitioners were hired on a non-tenured basis and for a fixed and predetermined term based on the Teaching Contract exemplified by the contract between the petitioner Lachica and AMACC. The CA ruled that the non-renewal of the petitioners' teaching contracts is sanctioned by the doctrine laid down in *Brent School, Inc. v. Zamora*[20] where the Court recognized the validity of contracts providing for fixed-period employment.

THE PETITION

The petitioners cite the following errors in the CA decision:[21]

1) The CA gravely erred in reversing the LA and NLRC illegal dismissal rulings; and

2) The CA gravely erred in not ordering their reinstatement with full, backwages.

The petitioners submit that the CA should not have disturbed the findings of the LA and the NLRC that they were illegally dismissed; instead, the CA should have accorded great respect, if not finality, to the findings of these specialized bodies as these findings were supported by evidence on record. Citing our ruling in *Soriano v. National Labor Relations Commission*,[22] the petitioners contend that in *certiorari* proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusions. They submit that the CA erred when it substituted its judgment for that of the Labor

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[20] G. R. No. L-48494, February 5, 1990, 181 SCRA 702.

[21] *Id.* at 8-18.

[22] G.R. No. 165594, April 23, 2007, 521 SCRA 526.

Arbiter and the NLRC who were the "*triers of facts*" who had the opportunity to review the evidence extensively.

On the merits, the petitioners argue that the applicable law on probationary employment, as explained by the LA, is Article 281 of the Labor Code which mandates a period of six (6) months as the maximum duration of the probationary period unless there is a stipulation to the contrary; that the CA should not have disturbed the LA's conclusion that the AMACC failed to support its allegation that they did not qualify under the new guidelines adopted for the school year 2000-2001; and that they were illegally dismissed; their employment was terminated based on standards that were not made known to them at the time of their engagement. On the whole, the petitioners argue that the LA and the NLRC committed no grave abuse of discretion that the CA can validly cite.

THE CASE FOR THE RESPONDENT

In their Comment,[23] AMACC notes that the petitioners raised no substantial argument in support of their petition and that the CA correctly found that the petitioners were hired on a non-tenured basis and for a fixed or predetermined term. AMACC stresses that the CA was correct in concluding that no actual dismissal transpired; it simply did not renew the petitioners' respective employment contracts because of their poor performance and failure to satisfy the school's standards.

AMACC also asserts that the petitioners knew very well that the applicable standards would be revised and updated from time to time given the nature of the teaching profession. The petitioners also knew at the time of their engagement that they must comply with the school's regularization policies as stated in the Faculty Manual. **Specifically, they must obtain a passing rating on the Performance Appraisal for Teachers (PAST) — the primary instrument to measure the performance of faculty members.**

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[23] *Id.* at 264-277.

Since the petitioners were not actually dismissed, AMACC submits that the CA correctly ruled that they are not entitled to reinstatement, full backwages and attorney's fees.

THE COURT'S RULING

We find the petition meritorious.

The CA's Review of Factual Findings under Rule 65

We agree with the petitioners that, as a rule in *certiorari* proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh each piece of evidence introduced in the case. The CA only examines the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction.[24] In the recent case of *Protacio v. Laya Mananghaya & Co.*,[25] we emphasized that:

> As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. **However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.** [Emphasis supplied]

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[24] See *Soriano, Jr. v. National Labor Relations Commission*, G.R. No. 165594, April 23, 2007, 521 SCRA 526; *Danzas Intercontinental, Inc. v. Daguman*, G.R. No. 154368, April 15, 2005, 456 SCRA 382.

[25] G.R. No. 168654, March 25, 2009.

As discussed below, our review of the records and of the CA decision shows that the CA erred in recognizing that grave abuse of discretion attended the NLRC's conclusion that the petitioners were illegally dismissed. Consistent with this conclusion, the evidence on record show that AMACC failed to discharge its burden of proving by substantial evidence the *just cause* for the non-renewal of the petitioners' contracts.

In *Montoya v. Transmed Manila Corporation*,[26] we laid down our basic approach in the review of Rule 65 decisions of the CA in labor cases, as follows:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**

Following this approach, our task is to determine whether the CA correctly found that the NLRC committed grave abuse of discretion in ruling that the petitioners were illegally dismissed.

Legal Environment in the Employment of Teachers

a. Rule on Employment on Probationary Status

A reality we have to face in the consideration of employment on probationary status of teaching personnel is that they are

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[26] G.R. No. 183329, August 27, 2009.

not governed purely by the Labor Code. The Labor Code is ***supplemented*** with respect to the period of probation by special rules found in the Manual of Regulations for Private Schools.[27] On the matter of ***probationary period***, Section 92 of these regulations provides:

> Section 92. *Probationary Period.* — **Subject in all instances to compliance with the Department and school requirements**, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and **nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.** [Emphasis supplied]

The CA pointed this out in its decision (as the NLRC also did), and we confirm the correctness of this conclusion. Other than on the period, the following quoted portion of Article 281 of the Labor Code still fully applies:

> x x x The services of an employee who has been engaged on a probationary basis may be terminated ***for a just cause*** when he fails to qualify as a regular employee in accordance with ***reasonable standards made known by the employer to the employee at the time of his engagement***. An employee who is allowed to work after a probationary period shall be considered a regular employee. [Emphasis supplied]

b. Fixed-period Employment

The use of employment for fixed periods during the teachers' probationary period is likewise an accepted practice in the teaching profession. We mentioned this in passing in *Magis Young Achievers' Learning Center v. Adelaida P. Manalo,*[28] albeit a

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[27] The 1992 Manual of Regulations is the applicable Manual as it embodied the pertinent rules at the time of the parties' dispute, but a new Manual has been in place since July 2008; see *Magis Young Achievers' Learning Center v. Adelaida P. Manalo*, G.R. No. 178835, February 13, 2009, 579 SCRA 421, 431-438.

[28] *Supra* note 27.

case that involved elementary, not tertiary, education, and hence spoke of a school year rather than a semester or a trimester. We noted in this case:

> **The common practice is for the employer and the teacher to enter into a contract, effective for one school year.** At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year — since it would be the third school year — of probationary employment. **At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract.** It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status.
>
> It is important that the contract of probationary employment specify the period or term of its effectivity. The failure to stipulate its precise duration could lead to the inference that the contract is binding for the full three-year probationary period.

We have long settled the validity of a fixed-term contract in the case *Brent School, Inc. v. Zamora*[29] that AMACC cited. Significantly, *Brent* happened in a school setting. Care should be taken, however, in reading *Brent* in the context of this case as *Brent* did not involve any probationary employment issue; it dealt purely and simply with the validity of a fixed-term employment under the terms of the Labor Code, then newly

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[29] G.R. No. L-48494, February 5, 1990.

issued and which does not expressly contain a provision on fixed-term employment.

c. Academic and Management Prerogative

Last but not the least factor in the academic world, is that a school enjoys academic freedom — a guarantee that enjoys protection from the Constitution no less. Section 5(2) Article XIV of the Constitution guarantees all institutions of higher learning academic freedom.[30]

The institutional academic freedom includes the right of the school or college to decide and adopt its aims and objectives, and to determine how these objections can best be attained, free from outside coercion or interference, save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompass the freedom of the school or college to determine for itself: (1) who may teach; (2) who may be taught; (3) how lessons shall be taught; and (4) who may be admitted to study.[31]

AMACC's right to academic freedom is particularly important in the present case, because of the new screening guidelines for AMACC faculty put in place for the school year 2000-2001. We agree with the CA that AMACC has the inherent right to establish high standards of competency and efficiency for its faculty members in order to achieve and maintain academic excellence. The school's prerogative to provide standards for its teachers and to determine whether or not these standards have been met is in accordance with academic freedom that gives the educational institution the right to choose who should teach.[32] In *Peña v. National Labor Relations Commission*,[33] we emphasized:

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[30] Section 5, paragraph (2) Article XIV of the 1987 CONSTITUTION reads: "Academic freedom shall be enjoyed in all institutions of higher learning."

[31] *Miriam College Foundation v. Court of Appeals*, G.R. No. 127930, December 15, 2000, 348 SCRA 265.

[32] *Cagayan Capitol v. National Labor Relations Commission*, G. R. Nos. 90010-11, September 14, 1990, 189 SCRA 65.

[33] G.R. No. 100629, July 5, 1996, 258 SCRA 65.

It is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside. Schools cannot be required to adopt standards which barely satisfy criteria set for government recognition.

The same academic freedom grants the school the autonomy to decide for itself the terms and conditions for hiring its teacher, subject of course to the overarching limitations under the Labor Code. Academic freedom, too, is not the only legal basis for AMACC's issuance of screening guidelines. The authority to hire is likewise covered and protected by its management prerogative — the right of an employer to regulate all aspects of employment, such as hiring, the freedom to prescribe work assignments, working methods, process to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.[34] Thus, AMACC has every right to determine for itself that it shall use fixed-term employment contracts as its medium for hiring its teachers. It also acted within the terms of the Manual of Regulations for Private Schools when it recognized the petitioners to be merely on probationary status up to a maximum of nine trimesters.

The Conflict: Probationary Status and Fixed-term Employment

The existence of the term-to-term contracts covering the petitioners' employment is not disputed, nor is it disputed that they were on probationary status — *not permanent or regular status* — from the time they were employed on May 25, 1998 and until the expiration of their Teaching Contracts on September 7, 2000. As the CA correctly found, their teaching stints only covered a period of at least seven (7) consecutive trimesters or two (2) years and three (3) months of service. ***This case, however,***

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[34] *Baybay Water District v. COA*, G.R. Nos. 147248-49, Jan. 23, 2002; see also: *Consolidated Food Corp. v. NLRC*, G.R. No. 118647, Sept. 23, 1999.

brings to the fore the essential question of which, between the two factors affecting employment, should prevail given AMACC's position that the teachers contracts expired and it had the right not to renew them. In other words, should the teachers' probationary status be disregarded simply because the contracts were fixed-term?

The provision on employment on probationary status under the Labor Code[35] is a primary example of the fine balancing of interests between labor and management that the Code has institutionalized pursuant to the underlying intent of the Constitution.[36]

On the one hand, employment on probationary status affords management the chance to fully scrutinize the true worth of hired personnel before the full force of the security of tenure guarantee of the Constitution comes into play.[37] Based on the standards set at the start of the probationary period, management is given the widest opportunity during the probationary period to reject hirees who fail to meet *its own adopted but reasonable standards*.[38] These standards, together with *the just*[39] *and*

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[35] Article 281 of the LABOR CODE provides:

ARTICLE 281. *Probationary employment.* — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

[36] See Section 3, par. 4, Article XIII, CONSTITUTION.

[37] See *International Catholic Migration Commission v. NLRC,* G.R. No. 72222, January 30, 1989, 169 SCRA 606.

[38] See *Grand Motor Parts Corporation v. Minister of Labor, et al.,* 215 Phil. 383 (1984).

[39] Article 282 of the LABOR CODE states:

ARTICLE 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:

authorized causes[40] *for termination of employment the Labor Code expressly provides*, are the grounds available to terminate the employment of a teacher on probationary status. For example, the school may impose reasonably stricter attendance or report compliance records on teachers on probation, and reject a probationary teacher for failing in this regard, although the same attendance or compliance record may not be required for a teacher already on permanent status. At the same time, the same just and authorizes causes for dismissal under the Labor Code apply to probationary teachers, so that they may be the first to be laid-off if the school does not have enough students for a given semester or trimester. Termination of employment on this basis is an authorized cause under the Labor Code.[41]

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[40] Article 283 of the LABOR CODE provides:

ARTICLE 283. *Closure of establishment and reduction of personnel*. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[41] *Ibid.*

Labor, for its part, is given the protection during the probationary period of knowing the company standards the new hires have to meet during the probationary period, *and to be judged on the basis of these standards*, aside from the usual standards applicable to employees after they achieve permanent status. Under the terms of the Labor Code, these standards should be made known to the teachers on probationary status at the start of their probationary period, or at the very least under the circumstances of the present case, at the start of the semester or the trimester during which the probationary standards are to be applied. *Of critical importance in invoking a failure to meet the probationary standards, is that the school should show — **as a matter of due process** — how these standards have been applied*. This is effectively the second notice in a dismissal situation that the law requires as a due process guarantee supporting the security of tenure provision,[42] and is in furtherance, too, of the basic rule in employee dismissal that the employer carries the burden of justifying a dismissal.[43] These rules ensure

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[42] The procedure for terminating an employee is found in Book VI, Rule I, Section 2(d) of the *Omnibus Rules Implementing the Labor Code*:

> *Standards of due process: requirements of notice*. — In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.
>
> In case of termination, the foregoing notices shall be served on the employee's last known address.

[43] See *Euro-Linea Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 75782, December 1, 1987, 156 SCRA 78 (1987).

compliance with the limited security of tenure guarantee the law extends to probationary employees.[44]

When fixed-term employment is brought into play under the above probationary period rules, the situation — as in the present case — may at first blush look muddled as fixed-term employment is in itself a valid employment mode under Philippine law and jurisprudence.[45] The conflict, however, is more apparent than real when the respective nature of fixed-term employment and of employment on probationary status are closely examined.

The fixed-term character of employment essentially refers ***to the period*** agreed upon between the employer and the employee; employment exists only for the duration of the term and ends on its own when the term expires. In a sense, employment on probationary status also refers to a period because of the technical meaning "*probation*" carries in Philippine labor law — a maximum period of six months, or in the academe, a period of three years for those engaged in teaching jobs. Their similarity ends there, however, because of the overriding meaning that being "*on probation*" connotes, *i.e.*, a process of testing and observing the character or abilities of a person who is new to a role or job.[46]

Understood in the above sense, the *essentially protective character of probationary status for management* can readily be appreciated. But this same protective character gives rise to

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[44] See *Biboso v. Victorias Milling Co., Inc.*, 166 Phil. 717 (1977); *Escudero v. Office of the President of the Philippines*, G.R. No. 57822, April 26, 1989, 172 SCRA 783.

[45] See *Brent School, Inc. v. Zamora*, *supra* note 29.

[46] Probation is defined as "the action of subjecting an individual to a period of testing and trial so as to be able to ascertain the individual's fitness or lack of fitness for something (as a particular job, membership in a particular organization, retention of a particular academic classification, enrollment in a particular school) or the condition of being subjected to such testing and trial or the period during which an individual is subjected to such testing and trial. Webster's Third International Dictionary of the English Language, Merriam-Webster Inc., 1993 ed.; see also *supra* note 38.

the countervailing but equally protective rule that the probationary period can only last for a specific maximum period and under reasonable, well-laid and properly communicated standards. Otherwise stated, within the period of the probation, any employer move *based on the probationary standards* and affecting the continuity of the employment must strictly conform to the probationary rules.

Under the given facts where the school year is divided into trimesters, the school apparently utilizes its fixed-term contracts as a convenient arrangement dictated by the trimestral system and not because the workplace parties really intended to limit the period of their relationship to any fixed term and to finish this relationship at the end of that term. If we pierce the veil, so to speak, of the parties' so-called fixed-term employment contracts, what undeniably comes out at the core is a fixed-term contract conveniently used by the school to define and regulate its relations with its teachers *during their probationary period*.

To be sure, nothing is illegitimate in defining the school-teacher relationship in this manner. The school, however, cannot forget that its system of fixed-term contract is a system that operates during the probationary period and for this reason is subject to the terms of Article 281 of the Labor Code. ***Unless this reconciliation is made, the requirements of this Article on probationary status would be fully negated as the school may freely choose not to renew contracts simply because their terms have expired. The inevitable effect of course is to wreck the scheme that the Constitution and the Labor Code established to balance relationships between labor and management.***

Given the clear constitutional and statutory intents, we cannot but conclude that in a situation where the probationary status overlaps with a fixed-term contract *not specifically used for the fixed term it offers*, Article 281 should assume primacy and the fixed-period character of the contract must give way. This conclusion is immeasurably strengthened by the petitioners' and the AMACC's hardly concealed expectation that the employment

on probation could lead to permanent status, and that the contracts are renewable unless the petitioners fail to pass the school's standards.

To highlight what we mean by a fixed-term contract *specifically used for the fixed term it offers*, a replacement teacher, for example, may be contracted for a period of one year to *temporarily* take the place of a permanent teacher on a one-year study leave. The expiration of the replacement teacher's contracted term, under the circumstances, leads to no probationary status implications as she was never employed on probationary basis; her employment is for a specific purpose with particular focus on the term and with every intent to end her teaching relationship with the school upon expiration of this term.

If the school were to apply the probationary standards (as in fact it says it did in the present case), these standards must not only be reasonable but must have also been communicated to the teachers at the start of the probationary period, or at the very least, at the start of the period when they were to be applied. These terms, *in addition to those expressly provided by the Labor Code*, would serve as the just cause for the termination of the probationary contract. As explained above, the details of this finding of just cause must be communicated to the affected teachers as a matter of due process.

AMACC, by its submissions, admits that it did not renew the petitioners' contracts because they failed to pass the Performance Appraisal System for Teachers (PAST) and other requirements for regularization that the school undertakes to maintain its high academic standards.[47] The evidence is unclear on the exact

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[47] Respondent's Position Paper dated October 5, 2000, *Rollo*, p. 96; Respondent's Comment dated November 24, 2008; *id.* at 266. In the proceedings before the LA, the petitioners argued as early as in their Reply that "[their] dismissal cannot be upheld on the basis of vague and general allegations in respondents Position Paper which is nothing but a collection of conclusions and assumptions without factual basis. As a matter of fact, respondents have not even specified who among complainants allegedly failed to pass the PAST and who among them allegedly did not comply with other requirements for regularization, promotion or increase in salary;" *id.* at 109.

terms of the standards, although the school also admits that these were standards under the Guidelines on the Implementation of AMACC Faculty Plantilla put in place at the start of school year 2000-2001.

While we can grant that the standards were duly communicated to the petitioners and could be applied beginning the 1st trimester of the school year 2000-2001, glaring and very basic gaps in the school's evidence still exist. The exact terms of the standards were never introduced as evidence; neither does the evidence show how these standards were applied to the petitioners.[48] Without these pieces of evidence (effectively, the finding of just cause for the non-renewal of the petitioners' contracts), we have nothing to consider and pass upon as valid or invalid *for each of the petitioners*. Inevitably, the non-renewal (or effectively, the termination of employment of employees on probationary status) lacks the supporting finding of just cause that the law requires and, hence, is illegal.

In this light, the CA decision should be reversed. Thus, the LA's decision, affirmed as to the results by the NLRC, should stand as the decision to be enforced, appropriately re-computed to consider the period of appeal and review of the case up to our level.

Given the period that has lapsed and the inevitable change of circumstances that must have taken place in the interim in the academic world and at AMACC, which changes inevitably affect current school operations, we hold that — in lieu of reinstatement — the petitioners should be paid separation pay computed on

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[48] We note that the petitioners attached in their Reply before the LA a letter stating that on July 27, 2000, they demanded for a copy of their performance ratings in the PAST for the first, second and third trimesters of the school year 1999-2000. Significantly, the evidence on record before us shows that AMACC did not present any copy of the petitioners' performance ratings in the PAST for the three consecutive trimesters of the school year 1999-2000 as well as the first trimester for the school year 2000-2001. AMACC also failed to present the petitioners' individual evaluation reports and other related documents to support its claim that they failed to pass the PAST and other requirements for regularization; *id.* at 113.

a trimestral basis from the time of separation from service up to the end of the complete trimester preceding the finality of this Decision.[49] The separation pay shall be in addition to the other awards, properly recomputed, that the LA originally decreed.

WHEREFORE, premises considered, we hereby *GRANT* the petition, and, consequently, *REVERSE* and *SET ASIDE* the Decision of the Court of Appeals dated November 29, 2007 and its Resolution dated June 20, 2008 in CA-G.R. SP No. 96599. The Labor Arbiter's decision of March 15, 2002, subsequently affirmed as to the results by the National Labor Relations Commission, stands and should be enforced with appropriate re-computation to take into account the date of the finality of this Decision.

In lieu of reinstatement, AMA Computer College-Parañaque City, Inc. is hereby *DIRECTED* to pay separation pay computed on a trimestral basis from the time of separation from service up to the end of the complete trimester preceding the finality of this Decision. For greater certainty, the petitioners are entitled to:

(a) backwages and 13th month pay computed from September 7, 2000 (the date AMA Computer College-Parañaque City, Inc. illegally dismissed the petitioners) up to the finality of this Decision;

(b) monthly honoraria (if applicable) computed from September 7, 2000 (the time of separation from service) up to the finality of this Decision; and

(c) separation pay on a trimestral basis from September 7, 2000 (the time of separation from service) up to the end of the complete trimester preceding the finality of this Decision.

The labor arbiter is hereby *ORDERED* to make another re-computation according to the above directives. No costs.

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[49] See *Talisay Employees' Laborers'Association v. Court of Industrial Relations*, G.R. No. L-39844, July 31, 1986, 143 SCRA 213, 226.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Perez, and *Mendoza,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 187605. April 13, 2010]

TECHNOL EIGHT PHILIPPINES CORPORATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and DENNIS AMULAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION ON THE CORRECTNESS OF THE CONCLUSIONS DRAWN BY THE APPELLATE COURT FROM THE SET OF FACTS IT CONSIDERED AS ONE OF LAW AND NOT OF FACT.— We find no procedural impediment to the petition. An objective reading of the petition reveals that Technol largely assails the correctness of the conclusions drawn by the CA from the set of facts it considered. The question therefore is one of law and not of fact, as we ruled in *Cucueco v. Court of Appeals*. Thus, while there is no dispute that a fight occurred between Amular and Ducay, on the one hand, and Mendoza, on the other, the CA concluded that although Amular committed a misconduct, it failed to satisfy jurisprudential standards to qualify as a just cause for dismissal — the conclusion that Technol now challenges. We see no legal problem, too, in wading into the factual records, as the

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[*] Designated additional Member *vice* Justice Roberto A. Abad per Special Order No. 832 dated March 30, 2010.

tribunals below clearly failed to properly consider the evidence on record. This is grave abuse of discretion on the part of the labor tribunals that the CA failed to appreciate.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; AN EMPLOYEE WHO COMMITS MISCONDUCT OR EXHIBITS IMPROPER BEHAVIOR IS UNFIT TO CONTINUE WORKING FOR THE EMPLOYER; PRIVATE RESPONDENT WAS LEGALLY DISMISSED.— Amular and Ducay point to Mendoza as the proximate cause of the fight because he challenged them to a one-on-one (*isa-isa lang*) bout. Looking back at the reason why Amular and Ducay were at the mall in the first place, this attributed causation hardly makes sense. To reiterate, they were purposely there to confront Mendoza about their work-related problem. They waited for him at the place where they expected him to be. When Mendoza appeared, they accosted him and put into motion the entire sorry incident. Under these circumstances, Amular undoubtedly committed a misconduct or exhibited improper behavior that constituted a valid cause for his dismissal under the law and jurisprudential standards. The circumstances of his misdeed, to our mind, rendered him unfit to continue working for Technol xxx.

3. ID.; ID.; ID.; DISMISSAL OF THE RESPONDENT EMPLOYEE, DECLARED LEGAL.— Neither do we believe that Amular was discriminated against because he was not the only one preventively suspended. As the CA itself acknowledged, Ducay received his notice of preventive suspension/notice of charge on May 19, 2002 while Amular received his on May 21, 2002. These notices informed them that they were being preventively suspended for 30 days from May 19, 2002 to June 17, 2002 for Ducay, and May 21, 2002 for Amular. **Thus, Amular was not illegally dismissed; he was dismissed for cause**.

4. ID.; ID.; ESSENCE OF DUE PROCESS IN DISMISSAL CASES IS SIMPLY AN OPPORTUNITY TO BE HEARD.— What we see in the records belie Amular's claim of denial of procedural due process. He chose not to present his side at the administrative hearing. In fact, he avoided the investigation into the charges against him by filing his illegal dismissal complaint ahead of the scheduled investigation. Under these facts, he was given the opportunity to be heard and he cannot

> now come to us protesting that he was denied this opportunity. To belabor a point the Court has repeatedly made in employee dismissal cases, the essence of due process is simply an opportunity to be heard; it is the denial of this opportunity that constitutes violation of due process of law.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya and Fernandez for petitioner.

D E C I S I O N

BRION, *J.*:

For resolution is the present Petition for Review on *Certiorari*[1] addressing the decision[2] and resolution[3] of the Court of Appeals (*CA*) of November 18, 2008 and April 17, 2009, respectively, in CA-G.R. SP No. 100406.[4]

THE ANTECEDENTS

The facts are summarized below.

The petitioner Technol Eight Philippines Corporation (*Technol*), located at 127 East Main Avenue, Laguna Technopark, Biñan, Laguna, manufactures metal parts and motor vehicle components. It hired the respondent Dennis Amular (*Amular*) in March 1998 and assigned him to Technol's Shearing Line, together with Clarence P. Ducay (*Ducay*). Rafael Mendoza (*Mendoza*) was the line's team leader.

On April 16, 2002 at about 5:30 p.m., Mendoza went to the Surf City Internet Café in Balibago, Sta. Rosa, Laguna. As

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[1] *Rollo*, pp. 8-53; filed under Rule 45 of the RULES OF COURT.

[2] *Id.* at 58-66; penned by Associate Justice Isaias Dicdican, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Marlene Gonzales-Sison, concurring.

[3] *Id.* at 68-69.

[4] *Technol Eight Philippines Corporation v. NLRC and Dennis Amular.*

Mendoza was leaving the establishment, he was confronted by Amular and Ducay who engaged him in a heated argument regarding their work in the shearing line, particularly Mendoza's report to Avelino S. De Leon, Jr. (*De Leon*), Technol's Production Control and Delivery (*PCD*) assistant supervisor, about Amular's and Ducay's questionable behavior at work. The heated argument resulted in a fistfight that required the intervention of the *barangay tanods* in the area.

Upon learning of the incident, Technol's management sent to Amular and Ducay a notice of preventive suspension/notice of discharge dated May 18, 2002[5] advising them that their fistfight with Mendoza violated Section 1-k of Technol's Human Resource Department (*HRD*) Manual. The two were given forty-eight (48) hours to explain why no disciplinary action should be taken against them for the incident. They were placed under preventive suspension for thirty (30) days, from May 19, 2002 to June 17, 2002 for Ducay, and May 21, 2002 to June 20, 2002 for Amular. Amular submitted a written statement on May 20, 2002.[6]

Thereafter, Amular received a notice dated June 8, 2002[7] informing him that Technol management will conduct an administrative hearing on June 14, 2002. He was also given two (2) days to respond in writing to the statements attached to and supporting the notice. A day before the hearing or on June 13, 2002, Amular filed a complaint for illegal suspension/ constructive dismissal with a prayer for separation pay, backwages and several money claims, against Technol. Amular failed to attend the administrative hearing. On July 4, 2002, Technol sent him a notice of dismissal.[8]

Before the Labor Arbiter, Amular alleged that in the afternoon of April 16, 2002, while he and his co-employee Ducay were walking around the shopping mall in Balibago, Sta. Rosa, Laguna,

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[5] *Rollo*, p. 133.

[6] *Id.* at 135-137.

[7] *Id.* at 142.

[8] *Id.* at 144-145.

they "*incidentally*" saw Mendoza with whom they wanted to discuss some personal matters. When they approached Mendoza, the latter raised his voice and asked what they wanted from him; Amular asked Mendoza what the problem was because Mendoza appeared to be always angry at him (Amular). Mendoza instead challenged Amular and Ducay to a fistfight and then punched Amular who punched Mendoza in return. Thereafter, a full-blown fistfight ensued until the *barangay tanods* in the area pacified the three.

Amular further alleged that he was asked by his immediate supervisor to submit a report on the incident, which he did on April 18, 2002.[9] Subsequently, Amular, Mendoza and Ducay were called by Technol management to talk to each other and to settle their differences; they agreed and settled their misunderstanding.

THE COMPULSORY ARBITRATION DECISIONS

On November 18, 2003, Executive Labor Arbiter Salvador V. Reyes rendered a decision[10] finding that Amular's preventive suspension and subsequent dismissal were illegal. He ruled that Amular's preventive suspension was based solely on unsubscribed written statements executed by Mendoza, Rogelio R. Garces and Mary Ann Palma (subscribed only on August 8, 2002) and that Mendoza, Amular and Ducay had settled their differences even before Amular was placed under preventive suspension. With respect to Amular's dismissal, the Arbiter held that Technol failed to afford him procedural due process since he was not able to present his side because he had filed a case before the National Labor Relations Commission (*NLRC*) at the time he was called to a hearing; Technol also failed to substantiate its allegations against Amular; the fistfight occurred around 200 to 300 meters away from the work area and it happened after office hours. Arbiter Reyes awarded Amular separation pay (since he did not want to be reinstated), backwages,

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[9] *Id.* at 135-137.

[10] *Id.* at 218-223.

13th month pay, service incentive leave pay and attorney's fees in the total amount of ₱158,987.70.

Technol appealed to the NLRC. In its decision promulgated on March 30, 2005,[11] the NLRC affirmed the labor arbiter's ruling. It found that Amular was unfairly treated and subjected to discrimination because he was the only one served with the notice to explain and placed under preventive suspension; his co-employee Ducay who was also involved in the incident was not. Technol moved for reconsideration, but the NLRC denied the motion in a resolution rendered on May 30, 2007.[12] Technol thereafter sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.[13]

THE CA DECISION

In its decision promulgated on November 18, 2008, the CA found no grave abuse of discretion on the part of the NLRC when it affirmed the labor arbiter's ruling that Amular was illegally dismissed. While the appellate court noted that Amular was dismissed on the ground of serious misconduct, a just cause for employee dismissal under the Labor Code,[14] it opined that Technol failed to comply with the jurisprudential guidelines that misconduct warranting a dismissal: (1) must be serious; (2) must relate to the performance of the employees duties; and (3) must show that the employee has become unfit to continue working for the employer.[15]

The appellate court pointed out that the mauling incident occurred outside the company premises and after office hours; it did not in any manner disrupt company operations nor pose a threat to the safety or peace of mind of Technol workers; neither did it cause substantial prejudice to the company. It

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[11] *Id.* at 102-106.

[12] *Id.* at 108-109.

[13] *Id.* at 70-97.

[14] Article 282 (a).

[15] *Supreme Steel Pipe Corporation v. Bardaje*, G.R. No. 170811, April 24, 2007, 522 SCRA 155.

explained that although it was not condoning Amular's misconduct, it found that "*the penalty of dismissal imposed by Technol on Amular was too harsh and evidently disproportionate to the act committed*."[16] The CA denied the motion for reconsideration Technol subsequently filed;[17] hence, the present petition.[18]

THE PETITION

Technol posits that the CA gravely erred in ruling that Amular was illegally dismissed, contending that Amular was discharged for violation of Section 1-k of its HRD Manual which penalizes the commission of a crime against a co-employee. It submits that Section 1-k of the HRD Manual is a reasonable company rule issued pursuant to its management prerogative. It maintains that the case should have been examined from the perspective of whether the company rule is reasonable and not on the basis of where and when the act was committed, or even whether it caused damage to the company. It adds that the manual does not distinguish whether the crime was committed inside or outside work premises or during or after office hours. It insists that if the rule were otherwise, any employee who wishes to harm a co-employee can just wait until the co-employee is outside the company premises to inflict harm upon him, and later argue that the crime was committed outside work premises and after office hours. It submits that the matter assumes special and utmost significance in this case because Amular inflicted physical injuries on a supervisor. In any event, Technol argues that even if the misconduct was committed outside company premises, the perpetrator can still be disciplined as long as the offense was work-related, citing *Oania v. NLRC*[19] and *Tanala v. NLRC*[20] in support of its position.

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[16] *Rollo*, p. 64.

[17] *Supra* note 3.

[18] *Supra* note 1.

[19] 314 Phil 655 (1995).

[20] 322 Phil 343 (1996).

Technol bewails the CA's appreciation of the implication of Amular's misconduct in the workplace, especially the court's observation that it did not cause damage to the company because it did not disrupt company operation, that it did not create a hostile environment inside the company, and that the fight was "*nipped in the bud by the timely intervention of those who saw the incident*."[21] Technol insists that it had to order Amular's dismissal in order to uphold the integrity of the company rules and to avoid the erosion of discipline among its employees. Also, it disputes the CA's conclusion that the fact that Amular's liability should be mitigated because the fight "*was nipped in the bud.*" It submits that Mendoza had already sustained grave injuries when the mauling was stopped.

Further, Technol maintains that the CA gravely erred in going beyond the issues submitted to it, since the NLRC decision only declared Amular's dismissal illegal on the ground that he was the only one subjected to disciplinary action and that the company merely relied on the written statements of Amular's co-employees.

On the rejection by the CA of the statements of Amular's co-employees regarding the incident, Technol contends that the statements of the witnesses, together with Amular's admission, constitute substantial evidence of guilt. It points out that the statement of Mendoza on the matter submitted during the company investigation and before the labor arbiter was not a "*stand alone*" statement; Mendoza's statement was corroborated by the statements of Rogelio R. Garces and Mary Ann Palma, verified under oath in the reply[22] it submitted to the arbiter. The statements were all in their handwriting, indicating that they were not *pro forma* or prepared on command; a medical certificate[23] and a *barangay* report[24] were likewise submitted.

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[21] *Rollo,* p. 64.

[22] *Id.* at 163-188.

[23] *Id.* at 132.

[24] *Id.* at 131.

Technol likewise disputes the NLRC's conclusion that Amular was discriminated against and unfairly treated because he was the only one preventively suspended after the mauling incident. It maintains that from the records of the case and as admitted by Amular himself in his position paper,[25] his co-employee Ducay was also preventively suspended.[26] That Mendoza was not similarly placed under preventive suspension was considered by Technol as an exercise of its management prerogative, since the circumstances surrounding the incident indicated the existence of a reasonable threat to the safety of Amular's co-employees and that Mendoza appeared to be the victim of Amular's and Ducay's assault.

THE CASE FOR AMULAR

In his Comment filed on August 12, 2009,[27] Amular asks that the petition be dismissed for "*utter lack of merit*." He admits that the mauling incident happened, but claims however that on April 18, 2002, the Technol's management called Mendoza, Ducay, and him to a meeting, asked them to explain their sides and thereafter requested them to settle their differences; without hesitation, they agreed to settle and even shook hands afterwards. He was therefore surprised that on May 18, 2002, he received a memorandum from Technol's HRD charging him and his co-employee Ducay for the incident. Without waiting for an explanation, Technol's management placed him under preventive suspension, but not Ducay. Adding insult to injury, when Amular followed up his case while on preventive suspension, he was advised by the HRD manager to simply resign and accept management's offer of ₱22,000.00, which offer was reiterated during the mandatory conference before the labor arbiter.

Amular particularly laments that his employment was terminated while the constructive dismissal case he filed against the company was still pending. He posits that his employment was terminated

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[25] *Id.* at 151.

[26] *Supra* note 5.

[27] *Rollo*, pp. 411-418.

first before he was informed of the accusations leveled against him — an indication of bad faith on the part of Technol.

Amular asks: if it were true that the mauling incident was a serious offense under company policy, why did it take Technol a month to give him notice to explain the mauling incident? He submits that the memorandum asking him to explain was a mere afterthought; he was dismissed without giving him the benefit to be informed of the true nature of his offense, thus denying him his right to be heard.

Finally, Amular questions the propriety of the present petition contending that it only raises questions of fact, in contravention of the rule that only questions of law may be raised in a petition for review on *certiorari*.[28] He points out that the findings of facts of the labor tribunals and the CA are all the same and therefore must be given respect, if not finality.[29]

THE RULING OF THE COURT

The Procedural Issue

We find no procedural impediment to the petition. An objective reading of the petition reveals that Technol largely assails the correctness of the conclusions drawn by the CA from the set of facts it considered. The question therefore is one of law and not of fact, as we ruled in *Cucueco v. Court of Appeals*.[30] Thus, while there is no dispute that a fight occurred between Amular and Ducay, on the one hand, and Mendoza, on the other, the CA concluded that although Amular committed a misconduct, it failed to satisfy jurisprudential standards to qualify as a just cause for dismissal — the conclusion that Technol now challenges. We see no legal problem, too, in wading into the factual records, as the tribunals below clearly failed to properly consider the evidence on record. This is grave abuse of discretion on the part of the labor tribunals that the CA failed to appreciate.

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[28] RULES OF COURT, Rule 45, Section 1.

[29] *Rollo*, p. 417.

[30] 440 Phil. 254 (2004).

The Merits of the Case

The CA misappreciated the true nature of Amular's involvement in the mauling incident. Although it acknowledged that Amular committed a misconduct, it did not consider the misconduct as work-related and reflective of Amular's unfitness to continue working for Technol. The appellate court's benign treatment of Amular's offense was based largely on its observation that the incident happened outside the company premises and after working hours; did not cause a disruption of work operations; and did not result in a hostile environment in the company. Significantly, it did not condone Amular's infraction, but it considered that Amular's dismissal was a harsh penalty that is disproportionate with his offense. It found support for this liberal view from the pronouncement of the Court in *Almira v. B.F. Goodrich Philippines, Inc.*,[31] that "*where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe*."

The record of the case, however, gives us a different picture. Contrary to the CA's perception, we find a work-connection in Amular's and Ducay's assault on Mendoza. As the CA itself noted,[32] the underlying reason why Amular and Ducay confronted Mendoza was to question him about his report to De Leon — Technol's PCD assistant supervisor — regarding the duo's questionable work behavior. The motivation behind the confrontation, as we see it, was rooted on workplace dynamics as Mendoza, Amular and Ducay interacted with one another in the performance of their duties.

The incident revealed a disturbing strain in Amular's and Ducay's characters — the urge to get even for a perceived wrong done to them and, judging from the circumstances, regardless of the place and time. The incident could very well have happened inside company premises had the two employees found time to confront Mendoza in the workplace as they intimated

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[31] 157 Phil. 110, 121 (1972).

[32] *Rollo*, p. 59.

in their written statements.[33] Having been the subject of a negative report regarding his work must have rankled on Amular that he resolved to do something about it; thus, he confronted Mendoza.

From the records, Ducay appeared to have cooperated with Amular in the violent confrontation with Mendoza. Ducay, however, resigned on June 7, 2002 a week before the filing of the complaint.[34] Hence, Technol did not act against him — a move that is within its prerogative to make.

In an obvious effort to mitigate his involvement in the mauling incident, Amular claimed in the administrative proceedings that while he and Ducay were walking around the shopping mall in Balibago, Sta. Rosa, Laguna, they "*incidentally*" saw their co-employee Mendoza "*with whom they wanted to clear some personal matters*."[35] We find this claim a clear distortion of what actually happened. Again, based on their written statements,[36] Amular and Ducay purposely set out for the Balibago commercial area on April 16, 2002 looking for Mendoza. It was not an incidental or casual encounter. They sought Mendoza out and confronted him regarding what they perceived as Mendoza's negative attitude towards them or "*pamamarako*" as Mendoza described it.[37] Considering the subject Amular and Ducay raised with Mendoza, it is not surprising that they had a heated verbal exchange (mostly between Amular and Mendoza) that deteriorated into a fistcuff fight, with Mendoza at the losing end as he suffered injuries from the blows he received.

Amular and Ducay point to Mendoza as the proximate cause of the fight because he challenged them to a one-on-one (*isa-isa lang*) bout.[38] Looking back at the reason why Amular and

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[33] *Id.* at 133-141; *supra* note 6.

[34] *Rollo*, p. 207.

[35] *Id.* at 149.

[36] *Supra* note 6.

[37] *Rollo*, p. 126.

[38] *Id.* at 135-137 and 138-141.

Ducay were at the mall in the first place, this attributed causation hardly makes sense. To reiterate, they were purposely there to confront Mendoza about their work-related problem. They waited for him at the place where they expected him to be. When Mendoza appeared, they accosted him and put into motion the entire sorry incident.

Under these circumstances, Amular undoubtedly committed a misconduct or exhibited improper behavior that constituted a valid cause for his dismissal under the law[39] and jurisprudential standards.[40] The circumstances of his misdeed, to our mind, rendered him unfit to continue working for Technol; guilt is not diminished by his claim that Technol's management called the three of them to a meeting, and asked them to explain their sides and settle their differences, which they did.[41] Mendoza significantly denied the alleged settlement, maintaining that while they were summoned by De Leon after the incident, he could not shake hands and settle with Amular and Ducay since they did not even apologize or ask forgiveness for what they did.[42] We do not find Mendoza's denial of Amular's claim unusual as Mendoza would not have stood his ground in this case if a settlement had previously been reached. That a meeting had taken place does not appear disputed, but a settlement cannot be inferred simply because a meeting took place.

Neither do we believe that Amular was discriminated against because he was not the only one preventively suspended. As the CA itself acknowledged, Ducay received his notice of preventive suspension/notice of charge[43] on May 19, 2002 while Amular received his on May 21, 2002. These notices informed them that they were being preventively suspended for 30 days from May 19, 2002 to June 17, 2002 for Ducay, and May 21, 2002 for Amular.[44]

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[39] *Supra* note 35.

[40] *Supra* note 15.

[41] *Supra* note 6.

[42] *Rollo*, p. 186.

[43] *Supra* note 5.

[44] *Rollo*, p. 60.

Thus, Amular was not illegally dismissed; he was dismissed for cause.

The Due Process Issue

The labor arbiter ruled that Technol failed to afford Amular procedural due process, since he was not able to present his side regarding the incident; at the time he was called to a hearing, he had already filed the illegal dismissal complaint.[45] The NLRC, on the other hand, held that the memorandum terminating Amular's employment was a mere formality, an afterthought designed to evade company liability since Amular had already filed an illegal dismissal case against Technol.[46]

We disagree with these conclusions. The notice of preventive suspension/notice of discharge served on Amular and Ducay required them to explain within forty-eight (48) hours why no disciplinary action should be taken against them for their involvement in the mauling incident.[47] Amular submitted two written statements: the first received by the company on May 19, 2002[48] and the other received on May 20, 2002.[49] On June 8, 2002, Technol management sent Amular a memorandum informing him of an administrative hearing on June 14, 2002 at 10:00 a.m., regarding the charges against him.[50] At the bottom left hand corner of the memorandum, the following notation appears: "accept the copy of notice but refused to receive, he will study first." A day before the administrative hearing or on June 13, 2002, Amular filed the complaint for illegal suspension/ dismissal[51] and did not appear at the administrative hearing. On July 4, 2002, the company sent Amular a notice of dismissal.[52]

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[45] *Id.* at 221.

[46] *Id.* at 104.

[47] *Supra* note 5.

[48] *Rollo*, p. 135.

[49] *Id.* at 136-137.

[50] *Id.* at 142.

[51] *Id.* at 213.

[52] *Supra* note 8.

What we see in the records belie Amular's claim of denial of procedural due process. He chose not to present his side at the administrative hearing. In fact, he avoided the investigation into the charges against him by filing his illegal dismissal complaint ahead of the scheduled investigation. Under these facts, he was given the opportunity to be heard and he cannot now come to us protesting that he was denied this opportunity. To belabor a point the Court has repeatedly made in employee dismissal cases, the essence of due process is simply an opportunity to be heard; it is the denial of this opportunity that constitutes violation of due process of law.[53]

In view of all the foregoing, we find the petition meritorious.

WHEREFORE, premises considered, we hereby *GRANT* the petition. The assailed decision and resolution of the Court of Appeals are *REVERSED* and *SET ASIDE*. The complaint for illegal dismissal is *DISMISSED* for lack of merit. Costs against respondent AMULAR.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Perez, and *Mendoza,*[*] *JJ.,* concur.

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[53] *Solid Development Corporation Workers Association v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530 SCRA 132.

[*] Designated additional Member *vice* Justice Roberto A. Abad per Special Order No. 832 dated March 30, 2010.

THIRD DIVISION

[G.R. No. 183879. April 14, 2010]

ROSITA SY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; WAYS OF COMMITTING ESTAFA.— Swindling or *estafa* is punishable under Article 315 of the RPC. There are three ways of committing *estafa*, *viz*.: (1) with unfaithfulness or abuse of confidence; (2) by means of false pretenses or fraudulent acts; or (3) through fraudulent means. The three ways of committing *estafa* may be reduced to two, *i.e.*, (1) by means of abuse of confidence; or (2) by means of deceit.

2. ID.; ID.; ELEMENTS.— The elements of *estafa* in general are the following: (a) that an accused defrauded another by abuse of confidence, or by means of deceit; and (b) that damage and prejudice capable of pecuniary estimation is caused the offended party or third person.

3. ID.; ID.; ESTAFA BY MEANS OF DECEIT; ELEMENTS; PRESENT IN CASE AT BAR.— The act complained of in the instant case is penalized under Article 315, paragraph 2(a) of the RPC, wherein *estafa* is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. It is committed by using fictitious name, or by pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits. The elements of *estafa* by means of deceit are the following, *viz*.: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property;

and (d) that, as a result thereof, the offended party suffered damage. In the instant case, all the foregoing elements are present. It was proven beyond reasonable doubt, as found by the RTC and affirmed by the CA, that Sy misrepresented and falsely pretended that she had the capacity to deploy Felicidad Navarro (Felicidad) for employment in Taiwan. The misrepresentation was made prior to Felicidad's payment to Sy of One Hundred Twenty Thousand Pesos (₱120,000.00). It was Sy's misrepresentation and false pretenses that induced Felicidad to part with her money. As a result of Sy's false pretenses and misrepresentations, Felicidad suffered damages as the promised employment abroad never materialized and the money she paid was never recovered.

4. ID.; ID.; ID.; FILING OF CHARGES FOR ILLEGAL RECRUITMENT DOES NOT BAR THE FILING OF ESTAFA, AND VICE-VERSA; A PERSON ACQUITTED OF ILLEGAL RECRUITMENT MAY BE HELD LIABLE FOR ESTAFA.— Illegal recruitment and *estafa* cases may be filed simultaneously or separately. The filing of charges for illegal recruitment does not bar the filing of *estafa*, and vice versa. Sy's acquittal in the illegal recruitment case does not prove that she is not guilty of *estafa*. Illegal recruitment and *estafa* are entirely different offenses and neither one necessarily includes or is necessarily included in the other. A person who is convicted of illegal recruitment may, in addition, be convicted of *estafa* under Article 315, paragraph 2(a) of the RPC. In the same manner, a person acquitted of illegal recruitment may be held liable for *estafa*. Double jeopardy will not set in because illegal recruitment is *malum prohibitum*, in which there is no necessity to prove criminal intent, whereas *estafa* is *malum in se*, in the prosecution of which, proof of criminal intent is necessary.

5. ID.; ID.; ID.; PROPER PENALTY.— The penalty prescribed for *estafa* under Article 315 of the RPC is *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount defrauded is over Twelve Thousand Pesos (₱12,000.00) but does not exceed Twenty-two Thousand Pesos (₱22,000.00), and if such amount exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one year for each additional Ten Thousand Pesos (₱10,000.00); but the total penalty that may be imposed shall not exceed twenty

years. In such cases, and in connection with the accessory penalties that may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

6. ID.; ID.; ID.; ID; INCREMENTAL PENALTY RULE; APPLICATION TO CASE AT BAR.— The addition of one year imprisonment for each additional ₱10,000.00, in excess of ₱22,000.00, is the incremental penalty. The incremental penalty rule is a mathematical formula for computing the penalty to be actually imposed using the prescribed penalty as the starting point. This special rule is applicable in *estafa* and in theft. In *estafa*, the incremental penalty is added to the maximum period of the penalty prescribed, at the discretion of the court, in order to arrive at the penalty to be actually imposed, which is the maximum term within the context of the Indeterminate Sentence Law (ISL). Under the ISL, attending circumstances in a case are applied in conjunction with certain rules of the Code in order to determine the penalty to be actually imposed based on the penalty prescribed by the Code for the offense. The circumstance is that the amount defrauded exceeds ₱22,000.00, and the incremental penalty rule is utilized to fix the penalty actually imposed. To compute the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00, and any fraction of ₱10,000.00 shall be discarded. In the instant case, *prision correccional* in its maximum period to *prision mayor* in its minimum period is the imposable penalty. The duration of *prision correccional* in its maximum period is from four (4) years, two (2) months and one (1) day to six (6) years; while *prision mayor* in its minimum period is from six (6) years and one (1) day to eight (8) years. The incremental penalty for the amount defrauded would be an additional nine years imprisonment, to be added to the maximum imposable penalty of eight years. Thus, the CA committed no reversible error in sentencing Sy to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum.

7. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; AWARD THEREOF, WARRANTED; FAILURE TO PRODUCE RECEIPTS, NOT FATAL.— As to the amount that should be returned or restituted by Sy, the sum that Felicidad gave to Sy,

i.e., ₱120,000.00, should be returned in full. The fact that Felicidad was not able to produce receipts is not fatal to the case of the prosecution since she was able to prove by her positive testimony that Sy was the one who received the money ostensibly in consideration of an overseas employment in Taiwan.

APPEARANCES OF COUNSEL

Victor S. Dacanay for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated July 22, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 30628.

Rosita Sy (Sy) was charged with one count of illegal recruitment in Criminal Case No. 02-0537 and one count of *estafa* in Criminal Case No. 02-0536. In a joint decision of the Regional Trial Court (RTC), Sy was exonerated of the illegal recruitment charge. However, she was convicted of the crime of *estafa*. Thus, the instant appeal involves only Criminal Case No. 02-0536 for the crime of *estafa*.

The Information[2] for *estafa* reads:

That sometime in the month of March 1997, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously defraud Felicidad Mendoza-Navarro *y* Landicho in

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[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; *rollo*, pp. 21-37.

[2] *Rollo*, p. 48.

the following manner, to wit: the said accused by means of false pretenses and fraudulent representation which she made to the said complainant that she can deploy her for employment in Taiwan, and complainant convinced by said representations, gave the amount of ₱120,000.00 to the said accused for processing of her papers, the latter well knowing that all her representations and manifestations were false and were only made for the purpose of obtaining the said amount, but once in her possession[,] she misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of Felicidad Mendoza-Navarro *y* Landicho in the aforementioned amount of ₱120,000.00.

CONTRARY TO LAW.[3]

On May 27, 2007, Sy was arraigned and pleaded not guilty to the crimes charged. Joint trial ensued thereafter.

As summarized by the CA, the facts of the case are as follows:

Version of the Prosecution

Sometime in March 1997, appellant, accompanied by Corazon Miranda (or ***"Corazon"***), went to the house of Corazon's sister, Felicidad Navarro (or ***"Felicidad"***), in Talisay, Batangas to convince her (Felicidad) to work abroad. Appellant assured Felicidad of a good salary and entitlement to a yearly vacation if she decides to take a job in Taiwan. On top of these perks, she shall receive compensation in the amount of Php120,000.00. Appellant promised Felicidad that she will take care of the processing of the necessary documents, including her passport and visa. Felicidad told appellant that she will think about the job offer.

Two days later, Felicidad succumbed to appellant's overseas job solicitation. With Corazon in tow, the sisters proceeded to appellant's residence in Better Homes, Moonwalk, Las Piñas City. Thereat, Felicidad handed to appellant the amount of Php60,000.00. In the third week of March 1997, Felicidad returned to appellant's abode and paid to the latter another Php60,000.00. The latter told her to come back the following day. In both instances, no receipt was issued by appellant to acknowledge receipt of the total amount of Php120,000.00 paid by Felicidad.

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[3] *Id*.

On Felicidad's third trip to appellant's house, the latter brought her to Uniwide in Sta. Cruz, Manila, where a male person showed to them the birth certificate that Felicidad would use in applying for a Taiwanese passport. The birth certificate was that of a certain Armida Lim, born to Margarita Galvez and Lim Leng on 02 June 1952. Felicidad was instructed on how to write Armida Lim's Chinese name.

Subsequently, appellant contacted Felicidad and thereafter met her at the Bureau of Immigration office. Thereat, Felicidad, posing and affixing her signature as Armida G. Lim, filled out the application forms for the issuance of Alien Certificate of Registration (ACR) and Immigrant Certificate of Registration (ICR). She attached to the application forms her own photo. Felicidad agreed to use the name of Armida Lim as her own because she already paid to appellant the amount of Php120,000.00.

In December 1999, appellant sent to Felicidad the birth certificate of Armida Lim, the Marriage Contract of Armida Lim's parents, ACR No. E128390, and ICR No. 317614. These documents were submitted to and eventually rejected by the Taiwanese authorities, triggering the filing of illegal recruitment and estafa cases against appellant.

Version of the Defense

Appellant denied offering a job to Felicidad or receiving any money from her. She asserted that when she first spoke to Felicidad at the latter's house, she mentioned that her husband and children freely entered Taiwan because she was a holder of a Chinese passport. Felicidad commented that many Filipino workers in Taiwan were holding Chinese passports.

Three weeks later, Felicidad and Corazon came to her house in Las Piñas and asked her if she knew somebody who could help Felicidad get a Chinese ACR and ICR for a fee.

Appellant introduced a certain Amelia Lim, who, in consideration of the amount of Php120,000.00, offered to Felicidad the use of the name of her mentally deficient sister, Armida Lim. Felicidad agreed. On their second meeting at appellant's house, Felicidad paid Php60,000.00 to Amelia Lim and they agreed to see each other

at Uniwide the following day. That was the last time appellant saw Felicidad and Amelia Lim.[4]

On January 8, 2007, the RTC rendered a decision,[5] the dispositive portion of which reads:

> WHEREFORE, premises considered the court finds the accused Rosita Sy NOT GUILTY of the crime of Illegal Recruitment and she is hereby ACQUITTED of the said offense. As regards the charge of Estafa, the court finds the accused GUILTY thereof and hereby sentences her to an indeterminate penalty of four (4) years of *prision correctional* (sic) as minimum to 11 years of *prision mayor*, as maximum. The accused is ordered to reimburse the amount of sixty-thousand (Php60,000.00) to the private complainant.
>
> SO ORDERED.[6]

Aggrieved, Sy filed an appeal for her conviction of *estafa*. On July 22, 2008, the CA rendered a Decision,[7] affirming with modification the conviction of Sy, *viz*.:

> WHEREFORE**,** with the MODIFICATION sentencing accused-appellant to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum, the appealed decision is AFFIRMED in all other respects.
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> SO ORDERED.[8]

Hence, this petition.

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[4] *Id*. at 22-25.

[5] Penned by Judge Erlinda Nicolas-Alvaro, RTC, Branch 198, Las Piñas City; *id*. at 39-44.

[6] *Id*. at 44.

[7] *Supra* note 1.

[8] *Id*. at 36.

The sole issue for resolution is whether Sy should be held liable for *estafa*, penalized under Article 315, paragraph 2(a) of the Revised Penal Code (RPC).[9]

Swindling or *estafa* is punishable under Article 315 of the RPC. There are three ways of committing *estafa*, *viz.*: (1) with unfaithfulness or abuse of confidence; (2) by means of false pretenses or fraudulent acts; or (3) through fraudulent means. The three ways of committing *estafa* may be reduced to two, *i.e.*, (1) by means of abuse of confidence; or (2) by means of deceit.

The elements of *estafa* in general are the following: (a) that an accused defrauded another by abuse of confidence, or by means of deceit; and (b) that damage and prejudice capable of pecuniary estimation is caused the offended party or third person.

The act complained of in the instant case is penalized under Article 315, paragraph 2(a) of the RPC, wherein *estafa* is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. It is committed by using fictitious name, or by pretending to possess power, influence,

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[9] Petitioner assigned the following errors in the CA Decision:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER OFFERED OVERSEAS JOB TO PRIVATE RESPONDENT.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER MISREPRESENTED AND FALSELY PRETENDED TO RESPONDENT THAT SHE HAD THE POWER AND CAPACITY TO DEPLOY HER FOR A WORK IN TAIWAN.

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER'S MISREPRESENTATION AND FALSE PRETENSES WAS WHAT INDUCED RESPONDENT TO PART WITH HER MONEY. (*Rollo*, p. 13).

qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The elements of *estafa* by means of deceit are the following, *viz*.: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[10]

In the instant case, all the foregoing elements are present. It was proven beyond reasonable doubt, as found by the RTC and affirmed by the CA, that Sy misrepresented and falsely pretended that she had the capacity to deploy Felicidad Navarro (Felicidad) for employment in Taiwan. The misrepresentation was made prior to Felicidad's payment to Sy of One Hundred Twenty Thousand Pesos (₱120,000.00). It was Sy's misrepresentation and false pretenses that induced Felicidad to part with her money. As a result of Sy's false pretenses and misrepresentations, Felicidad suffered damages as the promised employment abroad never materialized and the money she paid was never recovered.

The fact that Felicidad actively participated in the processing of the illegal travel documents will not exculpate Sy from liability. Felicidad was a hapless victim of circumstances and of fraud committed by Sy. She was forced to take part in the processing of the falsified travel documents because she had already paid ₱120,000.00. Sy committed deceit by representing that she could secure Felicidad with employment in Taiwan, the primary consideration that induced the latter to part with her money. Felicidad was led to believe by Sy that she possessed the power

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[10] *R.R. Paredes v. Calilung*, G.R. No. 156055, March 5, 2007, 517 SCRA 369; *Cosme, Jr. v. People*, G.R. No. 149753, November 27, 2006, 508 SCRA 190; *Jan-Dec Construction Corporation v. CA*, G.R. No. 146818, February 6, 2006, 481 SCRA 556.

and qualifications to provide Felicidad with employment abroad, when, in fact, she was not licensed or authorized to do so. Deceived, Felicidad parted with her money and delivered the same to petitioner. Plainly, Sy is guilty of *estafa*.

Illegal recruitment and *estafa* cases may be filed simultaneously or separately. The filing of charges for illegal recruitment does not bar the filing of *estafa*, and vice versa. Sy's acquittal in the illegal recruitment case does not prove that she is not guilty of *estafa*. Illegal recruitment and *estafa* are entirely different offenses and neither one necessarily includes or is necessarily included in the other. A person who is convicted of illegal recruitment may, in addition, be convicted of *estafa* under Article 315, paragraph 2(a) of the RPC.[11] In the same manner, a person acquitted of illegal recruitment may be held liable for *estafa*. Double jeopardy will not set in because illegal recruitment is *malum prohibitum*, in which there is no necessity to prove criminal intent, whereas *estafa* is *malum in se*, in the prosecution of which, proof of criminal intent is necessary.[12]

The penalty prescribed for *estafa* under Article 315 of the RPC is *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount defrauded is over Twelve Thousand Pesos (₱12,000.00) but does not exceed Twenty-two Thousand Pesos (₱22,000.00), and if such amount exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one year for each additional Ten Thousand Pesos (₱10,000.00); but the total penalty that may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties that may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The addition of one year imprisonment for each additional ₱10,000.00, in excess of ₱22,000.00, is the incremental penalty. The incremental penalty rule is a mathematical formula for computing the penalty to be actually imposed using the prescribed

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[11] *People v. Billaber*, 465 Phil. 726 (2004).

[12] *Id*.

penalty as the starting point. This special rule is applicable in *estafa* and in theft.[13]

In *estafa*, the incremental penalty is added to the maximum period of the penalty prescribed, at the discretion of the court, in order to arrive at the penalty to be actually imposed, which is the maximum term within the context of the Indeterminate Sentence Law (ISL).[14] Under the ISL, attending circumstances in a case are applied in conjunction with certain rules of the Code in order to determine the penalty to be actually imposed based on the penalty prescribed by the Code for the offense. The circumstance is that the amount defrauded exceeds ₱22,000.00, and the incremental penalty rule is utilized to fix the penalty actually imposed.[15]

To compute the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, and the difference shall be divided by ₱10,000.00, and any fraction of ₱10,000.00 shall be discarded.[16]

In the instant case, *prision correccional* in its maximum period to *prision mayor* in its minimum period is the imposable penalty. The duration of *prision correccional* in its maximum period is from four (4) years, two (2) months and one (1) day to six (6) years; while *prision mayor* in its minimum period is

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[13] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258.

[14] Under the ISL, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence an accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[15] *People v. Temporada*, *supra* note 13, at 263-264.

[16] *Id.* at 260.

from six (6) years and one (1) day to eight (8) years. The incremental penalty for the amount defrauded would be an additional nine years imprisonment, to be added to the maximum imposable penalty of eight years. Thus, the CA committed no reversible error in sentencing Sy to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum.

As to the amount that should be returned or restituted by Sy, the sum that Felicidad gave to Sy, *i.e.*, ₱120,000.00, should be returned in full. The fact that Felicidad was not able to produce receipts is not fatal to the case of the prosecution since she was able to prove by her positive testimony that Sy was the one who received the money ostensibly in consideration of an overseas employment in Taiwan.[17]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals dated July 22, 2008 in CA-G.R. CR No. 30628, sentencing petitioner Rosita Sy to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum, is hereby *AFFIRMED*. We, however, *MODIFY* the CA Decision as to the amount of civil indemnity, in that Sy is ordered to reimburse the amount of One Hundred Twenty Thousand Pesos (₱120,000.00) to private complainant Felicidad Navarro.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[17] *People v. Gonzales-Flores*, 408 Phil. 855 (2001); *People v. Mercado*, 364 Phil. 148 (1999).

THIRD DIVISION

[G.R. No. 186540. April 14, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMELDO "Pamentolan" OBINA, AMADO RAMIREZ, and CARLITO "Masoc" BALAGBIS, accused; EMELDO "Pamentolan" OBINA and AMADO RAMIREZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO SHOULD NOT BE DISTURBED ON APPEAL, ESPECIALLY WHERE THE SAME ARE AFFIRMED BY THE APPELLATE COURT.— As a rule, findings of the trial court on the credibility of witnesses and of their testimonies are accorded great respect, unless the trial court overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case. In criminal cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not. This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused. This is especially true when the factual findings of the trial court are affirmed by the appellate court. The rule finds an even more stringent application where said findings are sustained by the CA. In the case at bar, the Court finds no compelling reason to deviate from the said rule that factual findings of the trial court should not be disturbed on appeal. The RTC and the CA committed no reversible error in finding appellant Obina guilty of robbery with rape, while appellant Ramirez and accused Balagbis guilty of robbery.

2. CRIMINAL LAW; ROBBERY WITH RAPE; IMPOSABLE PENALTY.— As to the penalty imposed, the RTC correctly

sentenced appellant Obina to *reclusion perpetua* in accordance with Article 294 of the Revised Penal Code. The CA, likewise, committed no error in affirming the penalty imposed on appellant Ramirez and accused Balagbis.

3. ID.; ID.; CIVIL LIABILITIES OF ACCUSED.— As to the damages awarded, we hereby rule that appellant Obina is ordered to pay AAA ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The civil indemnity and moral damages are separately granted in rape cases without need of proof other than the commission of the crime. Civil indemnity is mandatorily awarded to the rape victim on the finding that rape was committed. It is in the nature of actual or compensatory damages. Similarly, moral damages are automatically awarded to rape victims without need of pleading or proof; it is assumed that a rape victim actually suffered moral injuries, entitling her to his award. That the victim suffered trauma, with mental, physical, and psychological suffering, is too obvious to still require recital at the trial by the victim, since we assume and acknowledge such agony as a gauge of her credibility.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated January 30, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00634.

On February 1, 1996, appellants were charged before the Regional Trial Court (RTC) of robbery with rape in an Information which reads:

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[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 5-20.

That on or about January 30, 1996, at about 1:30 o'clock in the morning at Brgy. Campesao, Borongan, Eastern Samar and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another with intent to gain, with the use of force and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away Eight Hundred Pesos (₱800.00) cash belonging to the herein offended party and on the occasion of said robbery said Imeldo Obina *alias* PAMENTOLAN, with lewd design and with the use of force and intimidation and in conspiracy with his other co-accused did then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party [AAA][2] against her will.

CONTRARY TO LAW.[3]

When arraigned, all the accused pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

The facts of the case are as follows:

On January 30, 1996, at around 1:30 a.m., AAA and her common-law husband, BBB, were roused from sleep when Emeldo Obina (Obina) and Carlito Balagbis (Balagbis) barged into their room after entering the kitchen by destroying the door shutter. AAA and BBB recognized both accused because of the illumination coming from the gas lamp that hung on a post near where they lay asleep.

Obina, who carried a knife, demanded money. AAA gave them all the money she had, amounting to Eight Hundred Pesos (₱800.00). Balagbis poked a knife, about twelve (12) inches long, on the side of BBB. Obina ordered BBB to kneel down and, simultaneously, mashed AAA's breasts and fingered her genital organ. A voice coming from under the house shouted: "you will kill first the man and later on we will play with the

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[2] Under Republic Act No. 9262, also known as "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real name of the victim and those of her immediate family members are withheld, and fictitious initials are instead used to protect the victim's privacy.

[3] *Rollo*, p. 6.

girl." The couple recognized the voice to be that of Amado Ramirez (Ramirez) whom they were familiar with.

Fearing for his life, BBB jumped from the window and ran towards the plantation. Obina and Balagbis chased BBB, but they failed to catch him. BBB then sought help from the police.

While Balagbis and Ramirez were chasing BBB, Obina took the opportunity to have carnal knowledge of AAA against her will. Thereafter, he ordered AAA to dress up and forced her to go with him. AAA was able to free herself from Obina's hold when several dogs barked at them. She ran towards the house of a neighbor and sought help. Later on, BBB and the police arrived.

On February 6, 1998, the RTC of Borongan, Eastern Samar, rendered a decision,[4] the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing facts and circumstances, accused EMELDO OBINA is hereby found guilty beyond reasonable doubt of the special complex crime of Robbery with Rape defined and penalized under Article 294, par. 1 of the Revised Penal Code, as amended by Section 9, par. 1 of Republic Act No. 7659 which took effect on December 31, 1993, which provides a penalty of *Reclusion Perpetua* to Death. Accordingly, Emeldo Obina is hereby sentenced to serve the indivisible penalty of *Reclusion Perpetua* and to pay the offended party [AAA] the amount ₱50,000.00 as moral damages, plus the costs of this suit. Accused Carlito Balagbis and Amado Ramirez are found guilty as co-principal of the crime of Robbery defined and penalized under Article 294, par. 5 of the Revised Penal Code as amended by Section 9, par. 5 of Republic Act No. 7659 which provides a penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period. Applying the Indeterminate Sentence Law, hereby sentences accused Carlito Balagbis and Amado Ramirez each to serve an imprisonment to 4 years and 2 months of *prision correccional*, as maximum, and all respondents are ordered to pay the victims [BBB] and [AAA] the amount of ₱800.00 jointly and severally, and to pay the cost of this suit.

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[4] CA *rollo*, pp. 22-38.

Records show that accused Emeldo Obina and Amado Ramirez have been detained since February 7, 1996 while Carlito Balagbis was detained on February 9, 1996. Each of the accused are therefore entitled to the preventive imprisonment thus far undergone by them, provided they agree with the rules and regulations imposed on convicted prisoners, otherwise they shall be entitled to only four-fifths (4/5) of their preventive custody in accordance with Article 29 of the Revised Penal Code as amended by Republic Act 6127.

SO ORDERED.[5]

Appellants Obina and Ramirez filed their respective appeals; while accused Balagbis withdrew his appeal on January 21, 2000.

On January 30, 2008, the CA rendered a Decision,[6] the *fallo* of which reads:

WHEREFORE, premises considered, the assailed *Sentence* [*Decision*] of the RTC, 8th Judicial Region, Branch 1, Borongan, Eastern Samar, in Criminal Case No. 10690, finding appellant, Emeldo Obina *alias* "Pamentolan," guilty beyond reasonable doubt of Robbery with Rape, and appellant Amado Ramirez and accused Carlito Balagbis *alias* "Masoc," guilty beyond reasonable doubt of Robbery, is hereby AFFIRMED with MODIFICATION, in that appellant Obina is ORDERED to pay the victim [AAA] the amount of ₱50,000.00 as civil indemnity.

No Costs.

SO ORDERED.[7]

Hence, this appeal.

The sole issue in this case is whether the CA committed reversible error in affirming the conviction of appellants.

The instant appeal is bereft of merit.

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[5] *Id.* at 36-38.

[6] *Supra* note 1.

[7] *Rollo*, pp. 19-20.

As a rule, findings of the trial court on the credibility of witnesses and of their testimonies are accorded great respect, unless the trial court overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case. In criminal cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not. This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused. This is especially true when the factual findings of the trial court are affirmed by the appellate court. The rule finds an even more stringent application where said findings are sustained by the CA.[8]

In the case at bar, the Court finds no compelling reason to deviate from the said rule that factual findings of the trial court should not be disturbed on appeal. The RTC and the CA committed no reversible error in finding appellant Obina guilty of robbery with rape, while appellant Ramirez and accused Balagbis guilty of robbery.

As to the penalty imposed, the RTC correctly sentenced appellant Obina to *reclusion perpetua* in accordance with Article 294 of the Revised Penal Code. The CA, likewise, committed no error in affirming the penalty imposed on appellant Ramirez and accused Balagbis.

As to the damages awarded, we hereby rule that appellant Obina is ordered to pay AAA ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

The civil indemnity and moral damages are separately granted in rape cases without need of proof other than the commission

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[8] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 705, citing *People v. Malapo*, G.R. No. 123115, August 25, 1998, 294 SCRA 579, 591.

of the crime.[9] Civil indemnity is mandatorily awarded to the rape victim on the finding that rape was committed.[10] It is in the nature of actual or compensatory damages.[11]

Similarly, moral damages are automatically awarded to rape victims without need of pleading or proof; it is assumed that a rape victim actually suffered moral injuries, entitling her to this award.[12] That the victim suffered trauma, with mental, physical, and psychological suffering, is too obvious to still require recital at the trial by the victim, since we assume and acknowledge such agony as a gauge of her credibility.[13]

WHEREFORE, in view of the foregoing, the Decision dated January 30, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00634 is hereby *AFFIRMED*. Costs against appellants.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[9] *People of the Philippines v. Jesus Paragas Cruz*, G.R. No. 186129, August 4, 2009.

[10] *People v. Espino, Jr., supra* note 8.

[11] *People v. Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613; *People v. Arivan*, G.R. No. 176065, April 22, 2008, 552 SCRA 448.

[12] *People of the Philippines v. Rolly Canares y Almanares*, G.R. No. 174065, February 18, 2009; *People v. Diocado*, G.R. No. 170567, November 14, 2008, 571 SCRA 123; *People v. Codilan*, G.R. No. 177144, July 23, 2008, 559 SCRA 623; *People v. Bunagan*, G.R. No. 177161, June 30, 2008, 556 SCRA 808; *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511; *People v. Malicsi*, G.R. No. 175833, January 29, 2008, 543 SCRA 93.

[13] *People v. Crespo*, *supra* note 11.

THIRD DIVISION

[G.R. No. 187483. April 14, 2010]

ARNEL BALARBAR *y* BIASORA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; TRIAL COURT'S FACTUAL FINDINGS, WHEN AFFIRMED BY THE APPELLATE COURT, ARE GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT. — When this Court is asked to go over the evidence presented by the parties and to analyze, assess and weigh the same to ascertain if the trial court, as affirmed by the appellate court, was correct in according superior credit to this or that piece of evidence and, eventually, to the totality of the evidence of one party or the other, the Court will, ordinarily, demur. When the trial court's factual findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon the Court.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165; REQUIREMENTS ON THE CUSTODY AND DISPOSITION OF CONFISCATED OR SEIZED DRUGS; NON-COMPLIANCE THEREWITH SHALL NOT RENDER VOID OR INVALID THE SEIZURES AND CUSTODY AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR. — [N]on-compliance with the requirements set forth in R.A. No. 9165 on the custody and disposition of confiscated or seized drugs, under justifiable grounds, shall not render void and invalid the seizures and custody of said items as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. The records show that the integrity and evidentiary value of the drugs seized from petitioner were properly preserved and safeguarded. In this case, the plastic sachet of *shabu* was properly marked before a letter-request was prepared for the crime laboratory to conduct the examination. From the time the illegal drug was seized from petitioner until the time the chemical examination was conducted thereon, its integrity was preserved.

It was not shown to have been contaminated in any manner. Its identity, quantity and quality remained untarnished, and was sufficiently established. Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Petitioner bears the burden of proving that the evidence was tampered or meddled with to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.

3. ID.; VIOLATION OF ARTICLE II, SECTION 11 OF REPUBLIC ACT NO. 9165; COMMITTED IN CASE AT BAR; PENALTY. — [W]e agree with the trial court, as affirmed by the CA, that the prosecution's evidence proved beyond reasonable doubt that petitioner is guilty of Violation of Article II, Section 11 of R.A. No. 9165, having knowingly carried with him the plastic sachet of *shabu* without legal authority at the time he was caught. The Court, however, modifies the penalty imposed. There being no mitigating or aggravating circumstance and in accordance with the Indeterminate Sentence Law, petitioner should be meted the indeterminate penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum. The Court affirms the ₱300,000.00 fine imposed by the trial court.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated October 28, 2008 and its

[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Mariflor Punzalan Castillo and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 65-71.

Resolution[2] dated April 2, 2009 in CA-G.R. CR No. 31116. The assailed Decision affirmed the decision of the Regional Trial Court (RTC)[3] dated July 11, 2007, convicting petitioner Arnel B. Balarbar of Violation of Article II, Section 11, Republic Act (R.A.) No. 9165; while the assailed Resolution denied petitioner's motion for reconsideration.

The case arose from the following facts:

On May 26, 2005, Police Officer (PO)1 Ernesto Aquino, Senior Police Officer (SPO)2 Enrique Columbino, PO2 Jesus Gerald Manaois, and PO2 Roberto de Vera of the Dagupan City Police Station, assigned at the Intelligence and City Anti-Illegal Drug Special Operation Task Force, were ordered to conduct a surveillance at the Muslim Area, Bonuan, Tondaligan, Dagupan City, reputed as a haven of drug pushers and users. When they arrived at the site at around 2:30 p.m., PO2 Manaois and PO2 Aquino saw petitioner coming out from the house of a certain Untah, a well-known drug pusher. PO2 Aquino asked petitioner, "*Taga saan ka brod*?" but the latter continued to walk and pretended not to hear the question. As the two police officers were following him, petitioner dropped something from his hands, which, after verification, turned out to be a plastic sachet of *shabu*. PO2 Manaois held petitioner's hand and asked him if the plastic sachet belonged to him, and he answered in the negative. After informing petitioner of his constitutional rights, the arresting officers brought him to the police station and indorsed him to the police investigator.[4]

The confiscation receipt was prepared but petitioner refused to sign it. PO2 Manaois and PO2 Aquino marked the confiscated plastic sachet of shabu and submitted the same to the crime laboratory for examination. The examination yielded positive results for *shabu*.[5] Petitioner was thus charged in an Information

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[2] *Id.* at 85-86.

[3] Branch 44, Dagupan City.

[4] *Rollo*, pp. 66-67.

[5] *Id.* at 67-68.

for Violation of Article II, Section 11, R.A. No. 9165 for having in his possession, custody and control shabu contained in a small heat-sealed plastic sachet weighing more or less 0.10 gram.[6] Upon arraignment, petitioner pleaded "not guilty."

For his part, petitioner set up the defense of denial and frame-up. He explained that on that fateful afternoon, he was looking for his friends when suddenly, the police officers approached him and pointed at him as the owner of the plastic sachet of *shabu* that they picked up from the street.[7]

After trial on the merits, the RTC found petitioner guilty as charged and sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine of ₱300,000.00. Petitioner's appeal was dismissed by the CA. Hence, the instant petition on the sole issue of:

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING HEREIN PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[8]

Petitioner questions his conviction primarily because the prosecution allegedly failed to establish the identity of the confiscated plastic sachet of *shabu*.

We find no reason to reverse petitioner's conviction. Hence, we affirm but with modification on the penalty imposed.

When this Court is asked to go over the evidence presented by the parties and to analyze, assess and weigh the same to ascertain if the trial court, as affirmed by the appellate court, was correct in according superior credit to this or that piece of evidence and, eventually, to the totality of the evidence of one party or the other, the Court will, ordinarily, demur. When the trial court's factual findings have been affirmed by the appellate

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[6] *Id.* at 23.

[7] *Id.* at 68.

[8] *Id.* at 9.

court, said findings are generally conclusive and binding upon the Court.[9]

We would like to stress that non-compliance with the requirements set forth in R.A. No. 9165 on the custody and disposition of confiscated or seized drugs, under justifiable grounds, shall not render void and invalid the seizures and custody of said items as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.[10]

The records show that the integrity and evidentiary value of the drugs seized from petitioner were properly preserved and safeguarded. In this case, the plastic sachet of *shabu* was properly marked before a letter-request was prepared for the crime laboratory to conduct the examination. From the time the illegal drug was seized from petitioner until the time the chemical examination was conducted thereon, its integrity was preserved. It was not shown to have been contaminated in any manner. Its identity, quantity and quality remained untarnished, and was sufficiently established.[11] Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Petitioner bears the burden of proving that the evidence was tampered or meddled with to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[12]

Hence, we agree with the trial court, as affirmed by the CA, that the prosecution's evidence proved beyond reasonable doubt that petitioner is guilty of Violation of Article II, Section 11 of R.A. No. 9165, having knowingly carried with him the plastic

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[9] *People v. Mateo*, G.R. No. 179478, July 28, 2008, 560 SCRA 397, 412-413.

[10] *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 397.

[11] *Id*.

[12] *People v. Miranda*, G.R. No. 174778, October 2, 2007, 534 SCRA 552.

sachet of *shabu* without legal authority at the time he was caught.[13] The Court, however, modifies the penalty imposed. There being no mitigating or aggravating circumstance and in accordance with the Indeterminate Sentence Law, petitioner should be meted the indeterminate penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum.[14] The Court affirms the ₱300,000.00 fine imposed by the trial court.

WHEREFORE, the Court *AFFIRMS* the October 28, 2008 Decision and the April 2, 2009 Resolution of the Court of Appeals in CA-G.R. CR No. 31116, with the *MODIFICATION* that petitioner Arnel B. Balarbar should be meted the indeterminate penalty of *TWELVE* (12) years and *ONE* (1) day as minimum to *FOURTEEN* (14) years and *EIGHT* (8) months as maximum, and a fine of ₱300,000.00.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[13] *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 442.

[14] *People v. Darisan*, G.R. No. 176151, January 30, 2009, 577 SCRA 486, 492; *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 443.

THIRD DIVISION

[G.R. No. 152234. April 15, 2010]

DIVERSIFIED SECURITY, INC., *petitioner, vs.* **ALICIA V. BAUTISTA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED NOT ONLY RESPECT BUT FINALITY. — In this case, the Labor Arbiter, the NLRC and the CA were all consistent in their factual findings that respondent's employment was indeed terminated without giving her notice and hearing. The NLRC's finding that respondent had been petitioner's employee since 1990, had also been affirmed by the CA. A close perusal of the records show that there is no cogent reason for this Court to deviate from the settled rule that factual findings of the NLRC, when affirmed by the Court of Appeals, are accorded not only respect but **finality**.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; DULY ESTABLISHED IN CASE AT BAR. — [T]he Court cannot subscribe to petitioner's argument that it did not dismiss respondent. Such a proposition stretches credulity as it is not in accord with human nature for an employee to go through all the trouble of filing a labor case against his or her employer if he or she were not in fact dismissed from employment. It is also quite telling that petitioner admitted in its Memorandum of Appeal dated January 29, 1998 and in its Position Paper dated July 21, 1998, that **it considered respondent as "resigned" starting November 1997**. Notably, such period of time coincides with respondent's contention that she was dismissed by petitioner on October 31, 1997. Petitioner's admission bolsters respondent's claim that she was, indeed, dismissed by petitioner at that time. For the very

same reason stated above, the Court cannot give any consideration to petitioner's contention that did not put up as a defense the alleged abandonment by respondent of her work. Petitioner insists that its defense is that there was no dismissal to speak of in the first place; respondent merely ceased reporting for work. Again, if that is indeed petitioner's defense, then the lower courts were right in giving it short shrift. Verily, the scenario presented by petitioner, *i.e.*, that an employee who has **not** been terminated from employment would, for no apparent reason, just stop coming to work and file a labor case against her employer, totally defies logic and common sense. The absurdity of petitioner's defense highlights the fact that respondent's claim, that she was dismissed without any notice and hearing, rings with truth. x x x From the foregoing, it is quite clear that the Labor Arbiter, the NLRC and the CA committed no grave abuse of discretion in ruling that there was illegal dismissal in this case.

3. ID.; ID.; ID.; ID.; REMEDIES OF AN ILLEGALLY DISMISSED EMPLOYEE. — Having firmly established that petitioner dismissed respondent without just cause, and without notice and hearing, then it is only proper to apply Article 279 of the Labor Code which provides that an illegally dismissed employee "shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." In addition to full backwages, the Court has also repeatedly ruled that in cases where reinstatement is no longer feasible due to strained relations, then separation pay may be awarded instead of reinstatement. In *Mt. Carmel College v. Resuena*, the Court reiterated that the separation pay, as an alternative to reinstatement, should be equivalent to one (1) month salary for every year of service.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated August 31, 2001 affirming the finding that petitioner illegally dismissed respondent, and the CA Resolution[2] dated February 11, 2002 denying herein petitioner's motion for reconsideration, be reversed and set aside.

The undisputed facts are as follows.

Respondent was employed by petitioner as an Executive Pool Secretary, but petitioner alleged that respondent turned out to be incompetent. Petitioner then assigned her to perform menial or insignificant jobs and allegedly transferred her to their branch office in Makati City. However, respondent allegedly failed to report for work at said branch office on the day she was supposed to do so.

On the other hand, respondent claimed that petitioner dismissed her on October 31, 1997 without any valid reason, neither was she given any notice and hearing.

In December of 1997, respondent filed a case for illegal dismissal against petitioner. Petitioner countered that respondent was not dismissed; rather, she was the one who severed her connection with petitioner by her "voluntary and unequivocal acts."

On September 29, 1998, the Labor Arbiter issued a Decision,[3] the dispositive portion of which reads as follows:

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[1] Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Eriberto U. Rosario, Jr. and Edgardo P. Cruz, concurring; *rollo*, pp. 32-40.

[2] *Id.* at 42-43.

[3] CA *rollo*, pp. 77-80.

WHEREFORE, premises considered, judgment is hereby entered, ordering the respondents [herein petitioner and its officers], jointly and severally, to pay the total sum of ₱92,733.33 as separation pay and proportionate mandatory 13th month pay of complainant. Other issues or claims are hereby DISMISSED for want of substantial evidence.

SO ORDERED.[4]

The foregoing Decision was appealed to the National Labor Relations Commission (NLRC), but the NLRC affirmed the Labor Arbiter's ruling that herein respondent was illegally dismissed. The dispositive portion of the NLRC Decision[5] dated February 23, 2000 is set forth hereunder:

WHEREFORE, premises considered, the decision under review is hereby MODIFIED by ordering the respondents, jointly and severally, to pay the complainant her proportionate 13th month pay for 1997 and full backwages from the date of her dismissal in October 31, 1997 up to the date of the Labor Arbiter's decision when separation pay was adjudged as an alternative relief to reinstatement in the total amount of SIXTY-SEVEN THOUSAND THREE HUNDRED PESOS (₱67,300.00). Respondents are likewise ordered to pay the complainant severance compensation equivalent to her one month salary for every year of service reckoned from February 1990 to October 1997, a fraction of six (6) months being considered as one year, the total amount being FORTY-ONE THOUSAND SIX HUNDRED PESOS (₱41,600.00).

SO ORDERED.[6]

Petitioners then filed a petition for *certiorari* with the CA under Rule 65 of the Rules of Court and on August 31, 2001, the CA issued the assailed Decision which disposed, thus:

WHEREFORE, in view of the foregoing, the decision of the National Labor Relations Commission is hereby **MODIFIED**, in

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[4] *Id.* at 80.

[5] *Id.* at 24-33.

[6] *Id.* at 31-32.

that, the liability of individual petitioners is hereby **DELETED** while the rest of the decision is **AFFIRMED**.

SO ORDERED.[7]

Petitioner moved for reconsideration, but the same was denied in the Resolution dated February 11, 2002. Hence, this petition wherein it is alleged that:

I.

THE COURT OF APPEALS ERRED IN FINDING THAT RESPONDENT BAUTISTA WAS DISMISSED FROM EMPLOYMENT AND THE DISMISSAL WAS ILLEGAL, DESPITE THE ABSENCE OF ANY ACT, ON THE PART OF PETITIONER, CONSTITUTIVE OF DISMISSAL OR MUCH LESS ILLEGAL DISMISSAL, IN CONTRAVENTION OF THE LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT;

II.

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER DSI DISMISSED RESPONDENT ON THE GROUND OF ABANDONMENT, DESPITE THE UNCONTROVERTED FACT THAT THE SAID GROUND WAS NEVER RAISED BY PETITIONER BY WAY OF DEFENSE AND ERRED IN THE AUTOMATIC APPLICATION OF THE RULE THAT A COMPLAINT OF ILLEGAL DISMISSAL IS INCONSISTENT WITH ABANDONMENT;

III.

THE COURT OF APPEALS ERRED IN GRANTING SEPARATION PAY TO RESPONDENT COMPUTED FROM 1990 ON THE BASIS ALONE OR PETITIONER DSI'S ARTICLE OF INCORPORATION DATED 1990, DESPITE THE UNCONTROVERTED FACT THAT RESPONDENT WAS EMPLOYED BY PETITIONER ONLY IN NOVEMBER 1996;

IV.

THE COURT OF APPEALS ERRED IN APPLYING ARTICLE 279 OF THE LABOR CODE BY ORDERING THE PAYMENT OF FULL BACKWAGES AND THIRTEENTH MONTH PAY TO THE

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[7] *Rollo*, p. 39.

RESPONDENT, DESPITE THE ABSENCE OF ANY SHOWING OF ILLEGAL DISMISSAL, OR EVEN OF ANY DISMISSAL.[8]

The Court finds the petition unmeritorious.

Petitioner's assignment of errors boils down to the sole issue of whether the CA correctly upheld the NLRC ruling that respondent was illegally dismissed by petitioner.

The Court sees it fit to reiterate and emphasize the oft-repeated ruling in *Reyes v. National Labor Relations Commission*,[9] to wit:

x x x findings of facts of quasi-judicial bodies like the NLRC, and affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts.

x x x x x x x x x

x x x **Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals**. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.[10]

In this case, the Labor Arbiter, the NLRC and the CA were all consistent in their factual findings that respondent's employment was indeed terminated without giving her notice and hearing. The NLRC's finding that respondent had been petitioner's employee since 1990, had also been affirmed by the CA. A close perusal of the records show that there is no cogent reason for this Court to deviate from the settled rule that factual findings of the NLRC, when affirmed by the Court of Appeals, are accorded not only respect but **finality**.

Moreover, the Court cannot subscribe to petitioner's argument that it did not dismiss respondent. Such a proposition stretches

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[8] *Id.* at 11-12.

[9] G.R. No. 160233, August 8, 2007, 529 SCRA 487.

[10] *Id.* at 494, 499. (Emphasis supplied.)

credulity as it is not in accord with human nature for an employee to go through all the trouble of filing a labor case against his or her employer if he or she were not in fact dismissed from employment. It is also quite telling that petitioner admitted in its Memorandum of Appeal[11] dated January 29, 1998 and in its Position Paper[12] dated July 21, 1998, that **it considered respondent as "resigned" starting November 1997**. Notably, such period of time coincides with respondent's contention that she was dismissed by petitioner on October 31, 1997. Petitioner's admission bolsters respondent's claim that she was, indeed, dismissed by petitioner at that time.

For the very same reason stated above, the Court cannot give any consideration to petitioner's contention that did not put up as a defense the alleged abandonment by respondent of her work. Petitioner insists that its defense is that there was no dismissal to speak of in the first place; respondent merely ceased reporting for work. Again, if that is indeed petitioner's defense, then the lower courts were right in giving it short shrift. Verily, the scenario presented by petitioner, *i.e.*, that an employee who has **not** been terminated from employment would, for no apparent reason, just stop coming to work and file a labor case against her employer, totally defies logic and common sense.

The absurdity of petitioner's defense highlights the fact that respondent's claim, that she was dismissed without any notice and hearing, rings with truth. This Court views with approval the observation of the CA and the NLRC, to wit:

> x x x the petitioners cannot justify their defense of abandonment as they failed to prove that indeed private respondent had abandoned her work. It did not even bother to send a letter to her last known address requiring her to report for work and explain her alleged continued absences. The ratiocination of public respondent [NLRC] on this score merits our *imprimatur*, *viz*:
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> > The law clearly spells out the manner with which an unjustified refusal to return to work by an employee may be established.

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[11] *Rollo*, pp. 67-77.

[12] *Id.* at 50-58.

> Thusly, respondent should have given complainant a notice with warning concerning her alleged absences (Section 2, Rule XIV, Book V, Implementing Rules and Regulations of the Labor Code). The notice requirement actually consists of two parts to be separately served on the employee to wit: (1) notice to apprise the employee of his absences with a warning concerning a possible severance of employment in the event of an unjustified excuse therefor, and (2) subsequent notice of the decision to dismiss in the event of an employee's refusal to pay heed to such warning. Only after compliance had been effected with those requirements can it be reasonably concluded that the employee had actually abandoned his job. In respondent's case, it is noted that more than two (2) months had already lapsed since complainant allegedly started to absent herself when the latter instituted her action for illegal dismissal. During the said period of time, no action was taken by the respondents regarding complainant's alleged absences, something which is quite peculiar had complainant's employment not been severed at all. Accordingly, we do not find respondents defense of abandonment to be impressed with merit in view of an utter lack of evidence to support the same. Hence, complainant's charge of illegal dismissal stands uncontroverted x x x.[13]

From the foregoing, it is quite clear that the Labor Arbiter, the NLRC and the CA committed no grave abuse of discretion in ruling that there was illegal dismissal in this case.

Having firmly established that petitioner dismissed respondent without just cause, and without notice and hearing, then it is only proper to apply Article 279 of the Labor Code which provides that an illegally dismissed employee "shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." In addition to full backwages, the Court has also repeatedly ruled that in cases where reinstatement is no longer feasible due to strained relations, then separation

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[13] CA Decision, *rollo*, pp. 37-38.

pay may be awarded instead of reinstatement.[14] In *Mt. Carmel College v. Resuena*,[15] the Court reiterated that the separation pay, as an alternative to reinstatement, should be equivalent to one (1) month salary for every year of service.[16]

IN VIEW OF THE FOREGOING, the instant petition is *DISMISSED*. The Decision and Resolution of the Court of Appeals, dated August 31, 2001 and February 11, 2002, respectively, in CA-G.R. SP No. 64038, are *AFFIRMED*. Petitioner is *ORDERED* to pay respondent Alicia V. Bautista (a) separation pay in the amount equivalent to one (1) month pay for every year of service; and (b) backwages, computed from the time compensation was withheld from her when she was unjustly terminated, up to the time of payment thereof. For this purpose, the records of this case are hereby *REMANDED* to the Labor Arbiter for proper computation of said awards. Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[14] *Nissan North Edsa Balintawak, Quezon City v. Serrano, Jr.*, G.R. No. 162538, June 4, 2009, 588 SCRA 238, 247.

[15] G.R. No. 173076, October 10, 2007, 535 SCRA 518.

[16] *Id.* at 541.

THIRD DIVISION

[G.R. No. 152364. April 15, 2010]

ALEJANDRA S. LAZARO, assisted by her husband, ISAURO M. LAZARO; LEONCIO D. SANTOS; ADOLFO SANTOS; NENITA S. LACAR; ANGELINA S. SAGLES, assisted by her husband, ALBERTO SANTOS, JR.; REGINA SANTOS and FABIAN SANTOS, *petitioners, vs.* **MODESTA AGUSTIN, FILEMON AGUSTIN, VENANCIA AGUSTIN, MARCELINA AGUSTIN, PAUL A. DALALO, NOEL A. DALALO, GREGORIO AGUSTIN and BIENVENIDO AGUSTIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; ADMISSIONS AGAINST INTEREST AND DECLARATIONS AGAINST INTEREST, DISTINGUISHED. — [T]here is a vital distinction between admissions against interest and declarations against interest. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness. Declarations against interest are those made by a person who is neither a party nor in privity with a party to the suit, are secondary evidence, and constitute an exception to the hearsay rule. They are admissible only when the declarant is unavailable as a witness. In the present case, since Basilisa is respondents' predecessor-in-interest and is, thus, in privity with the latter's legal interest, the former's sworn statement, if proven genuine and duly executed, should be considered as an admission against interest.

2. ID.; ID.; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIZED DOCUMENTS; PRESUMPTION OF REGULARITY, NOT ABSOLUTE. — Settled is the rule that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their

favor the presumption of regularity. However, this presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary. Moreover, not all notarized documents are exempted from the rule on authentication. Thus, an affidavit does not automatically become a public document just because it contains a notarial jurat. The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular.

3. ID.; CIVIL PROCEDURE; APPEALS; APPEAL VIA *CERTIORARI* BEFORE THE SUPREME COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; RATIONALE. — [A] question involving the regularity of notarization as well as the due execution of the subject sworn statement of Basilisa would require an inquiry into the appreciation of evidence by the trial court. It is not the function of this Court to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Settled is the rule that questions of fact cannot be raised in an appeal via *certiorari* before the Supreme Court and are not proper for its consideration. The rationale behind this doctrine is that a review of the findings of fact of the trial courts and the appellate tribunal is not a function this Court normally undertakes. The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower courts are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion. Although there are recognized exceptions to this rule, none exists in the present case to justify a departure therefrom.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; DETERMINATION THEREOF BY TRIAL COURT, GENERALLY RESPECTED ON APPEAL. — Petitioners rely heavily on the presumption of regularity accorded by law to notarized documents. While indeed, a notarized document enjoys this presumption, the fact that a deed is notarized is not a guarantee of the validity of its contents. x x x [T]he presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary. The presumption cannot be made to apply to the present case because the regularity in the execution of the sworn statement was challenged in the proceedings below where its *prima facie* validity was overthrown

by the highly questionable circumstances under which it was supposedly executed, as well as the testimonies of witnesses who testified on the improbability of execution of the sworn statement, as well as on the physical condition of the signatory, at the time the questioned document was supposedly executed. The trial and appellate courts were unanimous in giving credence to the testimonies of these witnesses. The Court has repeatedly held that it will not interfere with the trial court's determination of the credibility of witnesses, unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. The reason for this is that the trial court was in a better position to do so, because it heard the witnesses testify before it and had every opportunity to observe their demeanor and deportment on the witness stand.

5. LEGAL ETHICS; NOTARIES PUBLIC; FUNCTION AND DUTY; EXPLAINED. — [T]he principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed before a notary public and appended to a private instrument. Hence, a notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein.

APPEARANCES OF COUNSEL

Prospero P. Cortes for petitioners.
Ameurfina Respicio-Salenda for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* is the Decision[1] dated February 21, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 63321. The CA had affirmed, with modification, the Decision[2] dated February 6, 2001 of the Regional Trial Court (RTC) of Laoag City, Branch 13, in Civil Case No. 11951-13, which also affirmed, with modification, the Decision[3] dated January 6, 2000 of the Municipal Trial Court in Cities (MTCC) of Laoag City, Branch 1, in Civil Case No. 2834.

The factual and procedural antecedents of the case are as follows:

On November 4, 1998, herein petitioners filed against herein respondents a Complaint[4] for partition with the MTCC of Laoag City, alleging as follows:

x x x x x x x x x

II

That the plaintiffs and the defendants are the descendants of the late Simeon C. Santos, married to Trinidad Duldulao, who died intestate leaving a parcel of land situated in the Barrio of Natividad Nstra. Sra., Municipality of Laoag, designated as Lot No. 10675 of the Cadastral Survey of Laoag;

III

That Simeon C. Santos during his lifetime, married to Trinidad Duldulao, begot four (4) legitimate children, namely: Basilisa D. Santos, Alberto D. Santos, Leoncio D. Santos and Alejandra D. Santos.

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[1] Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Jose L. Sabio, Jr. and Sergio L. Pestaño, concurring; *rollo*, pp. 62-72.

[2] Records, pp. 301-305.

[3] *Id*. at 266-269.

[4] *Id*. at 1-7.

Basilisa D. Santos, [who] was married to Petronilo Agustin, is now deceased; Alberto Santos, married to Rizalina Guerrero, is now deceased, while Leoncio D. Santos, married to Dictinia Tabeta, and Alejandra D. Santos married to Isauro M. Lazaro, are still living;

IV

That in the desire of the children of Simeon C. Santos from whom the parcel of land originated as owner, his children, namely[:] Alberto, Leoncio and Alejandra, all surnamed Santos, consented that the parcel of land mentioned in paragraph II of this complaint be titled in the name of Basilisa, the latter being the eldest and so Original Certificate of Title No. 20742 in the name of Basilisa Santos was obtained although it was agreed among them that it did not and does not necessarily mean that Basilisa Santos is the sole and exclusive owner of this parcel of land, and as embodied in the Title obtained in the name of Basilisa Santos, the parcel of land is particularly described as follows:

> A parcel of land (Lot No. 10676 of the Cadastral survey of Laoag), with the improvements thereon, situated in the Barrio of Natividad Nstra. Sra., Municipality of Laoag. Bounded on the NE. by Lot No. 10677; on the SE. by Panganiban Street; on the SW. by Lot No. 10672; and on NW. by Lot No. 1065, containing an area of three hundred and one (301) square meters, more or less, covered by Tax Declaration No. 010-00224 for the year 1994 in the names of Modesta Agustin, *et al*. with a market value of ₱96,320.00 and an assessed value of ₱14,450.00.

V

That there is a residential house constructed on the lot described in paragraph IV of this complaint and in the construction of which plaintiff Alejandra Santos, then still single, spent the amount of ₱68,308.60, while Basilisa Santos and her children spent the amount of ₱3,495.00. Afterwards, Alejandra Santos got married to Isauro M. Lazaro who was employed in a private company and when he retired from the service, some additional constructions were made on the residential house and lot such as a bedroom, azotea, two (2) toilets, two (2) kitchens, a car garage, the money spent for these additional constructions came from the earnings of the spouses Alejandra Santos-Lazaro and Isauro M. Lazaro. The said residential

house is now covered by Tax Declaration No. 010-00225 in the names of Basilio Agustin (should be Basilisa Agustin) and Alejandra Santos for the year 1994 with a market value of ₱93,920.00 and an assessed value of zero;

VI

That without the knowledge and consent of the plaintiffs, the title of the lot described in paragraph IV of the complaint was transferred into another title which is now Transfer Certificate of Title No. T-20695 in the names of Modesta Agustin, Filemon Agustin, Venancia Agustin, Marcelina Agustin, Monica Agustin, Gregorio Agustin and Bienvenido Agustin who are the children of the late Basilisa Santos-Agustin who are herein named as defendants with Monica Agustin now deceased represented by her children Paul A. Dalalo and Noel A. Dalalo as defendants;

VII

That during the lifetime of Basilisa Santos-Agustin, plaintiff Alejandra Santos-Lazaro informed the former, who are sisters, that the transfer of the title covering the lot described in paragraph IV of this complaint in the name of Basilisa Santos into the names of her children would erroneously imply that the lot is solely and exclusively owned by Basilisa Santos-Agustin's children, but Basilisa Santos-Agustin replied [to] plaintiff Alejandra Santos-Lazaro not to worry because an affidavit was already executed by her recognizing and specifying that her brothers Alberto Santos and Leoncio Santos, and her sister Alejandra Santos-Lazaro would each get one fourth (¼) share of the lot;

VIII

That in a move to determine if the children and the heirs of Basilisa Santos-Agustin, namely: Modesta Agustin, Filemon Agustin, Venancia Agustin, Marcelina Agustin, Paul Dalalo and Noel Dalalo who are the successors of their mother the late Monica Agustin, Gregorio Agustin and Bienvenido Agustin would follow the line of thinking of their mother and grandmother of Paul A. Dalalo and Noel A. Dalalo on the shares of the lot and residential house erected on it, the plaintiffs initiated a partition in the *barangay* court where the lot is situated described in paragraph IV of this complaint, but that the children of Basilisa Santos-Agustin and her grandchildren Paul A. Dalalo and Noel A. Dalalo refused and opposed the partition claiming that they are the sole and exclusive owners of the lot being that the

lot is now titled in their names, and hence there was no settlement as shown by the certification of the *barangay* court hereto attached as Annex "A";

IX

That plaintiffs now invoke the intervention of the court to partition the lot in accordance with the law on intestate succession and to partition the residential house as specified below. x x x

x x x x x x x x x[5]

Petitioners also prayed for the grant of attorney's fees, moral and exemplary damages, and costs of suit.

Herein respondents filed their Answer with Counterclaim,[6] raising the following as their Special/Affirmative Defenses:

1. The subject parcel of land is owned exclusively by the defendants as heirs of the late Basilisa Santos, wife of Petronilo Agustin, who was the original registered owner of the property evidenced by OCT No. 20742; the plaintiffs never became owners of said land. There was never any agreement between the ascendants of the plaintiffs and defendants, neither is there any agreement between the plaintiffs and defendants themselves that in the ownership, the plaintiffs have a share over the lot;

2. The defendants are the ones paying for the real estate taxes of said land;

3. Some of the plaintiffs were able to stay on the subject house because defendants' mother Basilisa Santos was the eldest sibling and she had to take care of her brother Leoncio and sister Alejandra when these siblings were not yet employed and Basilisa allowed them to reside in the house constructed within the lot; Alejandra Santos stayed in the house up to the present with the agreement that she will spend for the renovation of the house in lieu of monthly rentals that she has to pay when she already became financially able;

4. Prior to 1962, subject property was mortgaged by Basilisa Santos Agustin to the Philippine National Bank and the property was foreclosed by PNB when the loan was not paid, hence, TCT No.

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[5] *Id*. at 2-4.

[6] *Id*. at 20-23.

(T-9522)-4495, under the name of the Philippine National Bank was issued (Annex "A"). Thereafter, Basilisa Santos-Agustin, purchased it from the PNB and TCT No. T-5662 was issued under her name (Annex "B"); the property was later on transferred to her direct descendants, the defendants herein as evidenced by TCT No. T-20695 (Annex "C");

x x x x x x x x x[7]

Respondents then prayed that petitioners' complaint be dismissed. In their Counterclaim, respondents asked the court to direct petitioners to pay reasonable compensation for the latter's use of the disputed property, exemplary and moral damages, attorney's fees, and costs of suit.

After the issues were joined and the pre-trial was terminated, trial on the merits ensued.

On January 6, 2000, the MTCC rendered its Decision[8] dismissing the complaint and denying petitioners' prayer for partition.

The MTCC ruled, among others, that no evidentiary value could be given to the affidavit allegedly executed by Basilisa, wherein she purportedly acknowledged her co-ownership of the subject property with her siblings Alberto, Leoncio and Alejandra, because the affiant was not presented on the witness stand, such that all the statements made in her affidavit were hearsay. Moreover, the MTCC held that two credible witnesses testified in plain, simple and straightforward manner that at the time the affidavit was supposed to have been signed and sworn to before the notary public, Basilisa was already bedridden and an invalid who could not even raise her hand to feed herself. In addition, the MTCC also gave credence to the testimony of the notary public, before whom the document was supposedly signed and sworn to, that the said affidavit was already complete and thumbmarked when the same was presented to him by a person who claimed to be Basilisa.

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[7] *Id*. at 21-22.

[8] *Rollo*, pp. 53-56.

Petitioners filed an appeal with the RTC of Laoag City.

On February 6, 2001 the RTC issued a Decision[9] affirming, with modification, the judgment of the MTCC. The RTC found that the house erected on the disputed lot was built and renovated by petitioners in good faith. As a consequence, the RTC held that petitioners were entitled to indemnity representing the costs of the construction and renovation of the said house. The dispositive portion of the RTC Decision, thus, reads:

> WHEREFORE, the decision of the lower court is hereby affirmed with the modification directing the appellees [herein respondents] to indemnify the appellants [herein petitioners] in the amount of ₱68,308.60 as proved by them.
>
> Considering the apparent error of the lower court in quoting the questioned lot as Lot No. 10675, the same is hereby corrected so as to reflect the correct lot number as Lot No. 10676 to conform to the evidence presented.
>
> SO ORDERED.[10]

Aggrieved by the RTC Decision, petitioners filed a petition for review with the CA.

On February 21, 2002, the CA issued its presently assailed Decision disposing as follows:

> WHEREFORE, the decision dated February 6, 2001 rendered in Civil Case No. 11951-13 is hereby AFFIRMED subject to the MODIFICATION that appellees [herein respondents] pay the amount of ₱68,308.60 in indemnity solely to appellant Alejandra Santos-Lazaro.
>
> SO ORDERED.[11]

Hence, the instant petition based on the following grounds:

> I. THE SWORN STATEMENT OF BASILISA S. AGUSTIN IS A DECLARATION AGAINST INTEREST WHICH

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[9] *Id*. at 57-61.

[10] *Id*. at 61.

[11] *Id*. at 72.

ESTABLISHES THE CO-OWNERSHIP OF LOT NO. 10676 BY AND AMONG THE PETITIONERS AND RESPONDENTS AS HEIRS OF THE LATE SIMEON C. SANTOS.[12]

II. THE CO-OWNERSHIP OF LOT NO. 10676 BY AND AMONG BASILISA S. AGUSTIN, ALBERTO D. SANTOS, ALEJANDRA S. LAZARO AND LEONCIO D. SANTOS DID NOT TERMINATE AS A RESULT OF THE TRANSFER OF THE LOT'S OWNERSHIP PRECIPITATED BY ACTS OF BASILISA S. AGUSTIN WITH RESPECT TO THE SUBJECT PROPERTY.[13]

III. PETITIONER ALEJANDRA S. LAZARO IS A CO-OWNER OF THE RESIDENTIAL HOUSE ON LOT NO. 10676 NOT MERELY A BUILDER IN GOOD FAITH WITH RESPECT THERETO AND AS SUCH, IS ENTITLED TO A PARTITION OF THE SUBJECT HOUSE.[14]

In their first assigned error, petitioners contend that Basilisa's sworn statement which recognizes her siblings' share in the disputed property is a declaration against interest which is one of the recognized exceptions to the hearsay rule. Petitioners argue that since the sworn statement was duly notarized, it should be admitted in court without further proof of its due execution and authenticity; that the testimonies of Basilisa's nurse and physician cannot qualify as clear and convincing evidence which could overthrow such notarized document; that the notary public cannot impugn the same document which he notarized for to do so would render notarized documents worthless and unreliable resulting in prejudice to the public.

As to the second assigned error, petitioners aver that their co-ownership of the questioned property with Basilisa did not cease to exist when the Philippine National Bank (PNB) consolidated its ownership over the said parcel of land. Petitioners assert that they did not lose their share in the property co-

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[12] *Id*. at 21.

[13] *Id*. at 26.

[14] *Id*. at 29.

owned when their share was mortgaged by Basilisa without their knowledge and consent; that the mortgage was limited only to the portion that may be allotted to Basilisa upon termination of their co-ownership; that PNB acquired ownership only of the share pertaining to Basilisa; that when Basilisa bought back the property from PNB, she simply re-acquired the portion pertaining to her and simply resumed co-ownership of the property with her siblings. Petitioners also contend that Basilisa's children did not acquire ownership of the subject lot by prescription, and that neither Basilisa nor respondents repudiated their co-ownership.

Anent the third assignment of error, petitioners argue that Alejandra Lazaro, being a co-owner of the disputed parcel of land and not simply a builder in good faith, is entitled to a partition of the subject residential house.

At the outset, it bears to point out that it is wrong for petitioners to argue that Basilisa's alleged sworn statement is a declaration against interest. It is not a declaration against interest. Instead, it is an admission against interest.

Indeed, there is a vital distinction between admissions against interest and declarations against interest. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness.[15] Declarations against interest are those made by a person who is neither a party nor in privity with a party to the suit, are secondary evidence, and constitute an exception to the hearsay rule. They are admissible only when the declarant is unavailable as a witness.[16] In the present case, since Basilisa is respondents' predecessor-in-interest and is, thus, in privity with the latter's legal interest, the former's sworn statement, if proven genuine and duly executed, should be considered as an admission against interest.

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[15] *Unchuan v. Lozada*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435.

[16] *Id*.

A cursory reading of the subject sworn statement also reveals that it refers to a parcel of land denominated as Lot No. 10678 while the property being disputed is Lot No. 10676.[17] On this basis, it cannot be concluded with certainty that the property being referred to in the sworn statement is the same property claimed by petitioners.

Having made the foregoing observations and discussions, the question that arises is whether the subject sworn statement, granting that it refers to the property being disputed in the present case, can be given full faith and credence in view of the issues raised regarding its genuineness and due execution.

The Court rules in the negative.

Settled is the rule that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity.[18] However, this presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary.[19]

Moreover, not all notarized documents are exempted from the rule on authentication.[20] Thus, an affidavit does not automatically become a public document just because it contains a notarial jurat.[21] The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular.[22]

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[17] See Exhibit "C", records, p. 85.

[18] *De Jesus v. Court of Appeals*, G.R. No. 127857, June 20, 2006, 491 SCRA 325, 334; *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, February 10, 2006, 482 SCRA 164, 174.

[19] *Potenciano v. Reynoso*, 449 Phil. 396, 406 (2003).

[20] *Cequeña v. Bolante*, 386 Phil. 419, 427 (2000).

[21] *Id*.

[22] *Dela Rama v. Papa*, G.R. No. 142309, January 30, 2009, 577 SCRA 233, 244.

However, a question involving the regularity of notarization as well as the due execution of the subject sworn statement of Basilisa would require an inquiry into the appreciation of evidence by the trial court. It is not the function of this Court to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Settled is the rule that questions of fact cannot be raised in an appeal via *certiorari* before the Supreme Court and are not proper for its consideration.[23] The rationale behind this doctrine is that a review of the findings of fact of the trial courts and the appellate tribunal is not a function this Court normally undertakes.[24] The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower courts are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.[25] Although there are recognized exceptions[26] to this rule, none exists in the present case to justify a departure therefrom.

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[23] *Cabang v. Basay*, G.R. No. 180587, March 20, 2009, 582 SCRA 172, 186.

[24] *Id*.

[25] *Id.* at 186-187.

[26] These recognized exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record (*Bernaldo v. The Ombudsman and the Department of Public Works and Highways*, G.R. No. 156286, August 13, 2008, 562 SCRA 60); and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion (*Superlines Transportation Co., Inc. v. Philippine National Coordinating Council*, G.R. No. 169596, March 28, 2007, 519

Petitioners rely heavily on the presumption of regularity accorded by law to notarized documents. While indeed, a notarized document enjoys this presumption, the fact that a deed is notarized is not a guarantee of the validity of its contents.[27] As earlier discussed, the presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary.[28] The presumption cannot be made to apply to the present case because the regularity in the execution of the sworn statement was challenged in the proceedings below where its *prima facie* validity was overthrown by the highly questionable circumstances under which it was supposedly executed, as well as the testimonies of witnesses who testified on the improbability of execution of the sworn statement, as well as on the physical condition of the signatory, at the time the questioned document was supposedly executed. The trial and appellate courts were unanimous in giving credence to the testimonies of these witnesses. The Court has repeatedly held that it will not interfere with the trial court's determination of the credibility of witnesses, unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[29] The reason for this is that the trial court

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SCRA 432, 441, citing *Insular Life Assurance Co., Ltd. v. Court of Appeals*, 428 SCRA 79, 85-86 [2004]; see also *Grand Placement and General Services Corporation v. Court of Appeals*, G.R. No. 142358, January 31, 2006, 481 SCRA 189, 202, citing *Mayon Hotel & Restaurant v. Adana*, 458 SCRA 609, 624 [2005]; *Castillo v. NLRC*, 367 Phil. 603, 619 [1999] and *Insular Life Assurance Co. Ltd. v. CA, supra*; *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229, citing *Insular Life Assurance Co. Ltd. v. Court of Appeals, supra*, citing *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349, 1356 [2000]; *Nokom v. National Labor Relations Commission*, 390 Phil. 1228, 1242-1243 [2000] and *Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 [2000]; *Aguirre v. Court of Appeals*, 421 SCRA 310, 319 [2004]; *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279, 288 [2002]).

[27] *San Juan v. Offril*, G.R. No. 154609, April 24, 2009, 586 SCRA 439, 445-446.

[28] *China Banking Corporation, Inc. v. Court of Appeals*, G.R. No. 155299, July 24, 2007, 528 SCRA 103, 110.

[29] *San Juan v. Offril, supra* note 27.

was in a better position to do so, because it heard the witnesses testify before it and had every opportunity to observe their demeanor and deportment on the witness stand.[30]

Considering the foregoing, the Court finds no reason to reverse the rulings of the MTCC, the RTC and the CA. Although the questioned sworn statement is a public document having in its favor the presumption of regularity, such presumption was adequately refuted by competent witnesses.

The Court further agrees with the ruling of the RTC that:

> The testimony of [the notary public] Atty. Angel Respicio did not suffice to rebut the evidence of the appellees considering his admission that the affidavit was already thumbmarked when presented to him by one who claimed to be Basilisa Santos and whom, the witness said he did not know personally. Further, what makes the documents suspect is the fact that it was subscribed on the same date as the financial statement of Alejandra Santos.

It may not be amiss to point out, at this juncture, that the principal function of a notary public is to authenticate documents.[31] When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence.[32] Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery.[33] A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed before a notary public and appended to a private instrument.[34] Hence,

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[30] *Id.* at 446-447.

[31] *Vda. de Bernardo v. Restauro*, 452 Phil. 745, 751 (2003).

[32] *Id.*

[33] *Id.*

[34] *Id.*

a notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity.[35] A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein.[36]

In the instant case, the notary public should have exercised utmost diligence in ascertaining the true identity of the person executing the said sworn statement. However, the notary public did not comply with this requirement. He simply relied on the affirmative answers of the person appearing before him attesting that she was Basilisa Santos; that the contents of the sworn statement are true; and that the thumbmark appearing on the said document was hers. However, this would not suffice. He could have further asked the person who appeared before him to produce any identification to prove that she was indeed Basilisa Santos, considering that the said person was not personally known to him, and that the thumbmark appearing on the document sought to be notarized was not affixed in his presence. But he did not. Thus, the lower courts did not commit any error in not giving evidentiary weight to the subject sworn statement.

The second and third assigned errors proceed on the presumption that petitioners are co-owners of the disputed property. Since the Court has already ruled that the lower courts did not err in finding that petitioners failed to prove their claim that they were co-owners of the said property, there is no longer any need to discuss the other assigned errors.

WHEREFORE, the petition is *DENIED*. The February 21, 2002 Decision of the Court of Appeals in CA-G.R. SP No. 63321 is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[35] *Id*.

[36] *Bautista v. Bernabe,* A.C. No. 6963, February 9, 2006, 482 SCRA 1, 6.

THIRD DIVISION

[G.R. No. 168796. April 15, 2010]

SILVINO A. LIGERALDE, *petitioner, vs.* **MAY ASCENSION A. PATALINGHUG and the REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AVAILABLE WHEN THERE IS CAPRICIOUS, ARBITRARY OR WHIMSICAL EXERCISE OF POWER; GRAVE ABUSE OF DISCRETION, DEFINED. — In order to avail of the special civil action for *certiorari* under Rule 65 of the Revised Rules of Court, the petitioner must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess in jurisdiction. By grave abuse of discretion is meant such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power.

2. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; NULLITY OF MARRIAGE UNDER ARTICLE 36; PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS. — Psychological incapacity required by Art. 36 must be characterized by (a) gravity, (b) juridical antecedence and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage. It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage. It must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

3. ID.; ID.; ID.; ID.; GUIDING PRINCIPLES IN RESOLVING PETITIONS FOR DECLARATION OF NULLITY OF MARRIAGE BASED ON ARTICLE 36. —The Court likewise laid down the guidelines in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code, in *Republic v. Court of Appeals*. Relevant to this petition are the following: (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff; (2) the root cause of the psychological incapacity must be medically or clinically identified, alleged in the complaint, sufficiently proven by experts and clearly explained in the decision; (3) the incapacity must be proven to be existing at the "time of the celebration" of the marriage; (4) such incapacity must also be shown to be medically or clinically permanent or incurable; and (5) such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.

APPEARANCES OF COUNSEL

Roberto N. Raagas for petitioner.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition seeks to set aside the November 30, 2004 Decision[1] of the Court of Appeals *(CA)* which reversed the Decision[2] of the Regional Trial Court of Dagupan City *(RTC)* declaring the marriage between petitioner Silvino A. Ligeralde *(Silvino)* and private respondent May Ascension A. Patalinghug *(May)* null and void.

Silvino and May got married on October 3, 1984. They were blessed with four children. Silvino claimed that, during their marriage, he observed that May had several manifestations

[1] Penned by Associate Justice Magdangal M. De Leon, and concurred in by Justices Romeo A. Brawner and Mariano C. Del Castillo, promulgated on November 30, 2004, *Rollo*, pp. 18-24.

[2] Promulgated on October 22, 1999; *id*. at 37-40.

of a negative marital behavior. He described her as immature, irresponsible and carefree. Her infidelity, negligence and nocturnal activities, he claimed, characterized their marital relations.

Sometime in September 1995, May arrived home at 4:00 o'clock in the morning. Her excuse was that she had watched a video program in a neighboring town, but admitted later to have slept with her Palestinian boyfriend in a hotel. Silvino tried to persuade her to be conscientious of her duties as wife and mother. His pleas were ignored. His persuasions would often lead to altercations or physical violence.

In the midst of these, Silvino's deep love for her, the thought of saving their marriage for the sake of their children, and the commitment of May to reform dissuaded him from separating from her. He still wanted to reconcile with her.

The couple started a new life. A few months after, however, he realized that their marriage was hopeless. May was back again to her old ways. This was demonstrated when Silvino arrived home one day and learned that she was nowhere to be found. He searched for her and found her in a nearby apartment drinking beer with a male lover.

Later, May confessed that she had no more love for him. They then lived separately.

With May's irresponsible, immature and immoral behavior, Silvino came to believe that she is psychologically incapacitated to comply with the essential obligations of marriage.

Prior to the filing of the complaint, Silvino referred the matter to Dr. Tina Nicdao-Basilio for psychological evaluation. The psychologist certified that May was psychologically incapacitated to perform her essential marital obligations; that the incapacity started when she was still young and became manifest after marriage; and that the same was serious and incurable.[3]

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[3] Due to the negligence of May in her duties as homemaker, and due to her nocturnal activities with friends and business endeavors, heated altercations ensue, causing physical and verbal abuse on both parties. A more serious cause of arguments were May's admission of infidelity, making her leave their home, leaving the care of the children to an aunt.

On October 22, 1999, the RTC declared the marriage of Silvino and May null and void. Its findings were based on the Psychological Evaluation Report of Dr. Tina Nicdao-Basilio.

The Court of Appeals reversed the RTC decision. It ruled that private respondent's alleged sexual infidelity, emotional immaturity and irresponsibility do not constitute psychological incapacity within the contemplation of the Family Code and that the psychologist failed to identify and prove the root cause thereof or that the incapacity was medically or clinically permanent or incurable.

Hence, this petition for *certiorari* under Rule 65.

The core issue raised by petitioner Silvino Ligeralde is that "the assailed order of the CA is based on conjecture and, therefore, issued without jurisdiction, in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction."[4]

The Court required the private respondent to comment but she failed to do so. Efforts were exerted to locate her but to no avail.

Nevertheless, the petition is technically and substantially flawed. On procedural grounds, the Court agrees with the public respondent that the petitioner should have filed a petition for review on *certiorari* under Rule 45 instead of this petition for *certiorari* under Rule 65. For having availed of the wrong remedy, this petition deserves outright dismissal.

[E]ven when client had forgiven her several times, and took her in so that they can start anew, May continued with her illicit relations with other men, causing much shame and humiliation on client Silvino in their community.

x x x x x x x x x

In view of the above mentioned psychological findings, it is the opinion of the undersigned psychologist that to a certain extent, client's wife May Ascension is not psychologically capable of performing her duties and responsibilities as wife to her husband Silvino, and mother to their four children who are grossly neglected as a result of her behavior. (CA Decision, *id*. at 20)

[4] Petition for Review on *Certiorari*, *id*. at 9.

Substantially, the petition has no merit. In order to avail of the special civil action for *certiorari* under Rule 65 of the Revised Rules of Court,[5] the petitioner must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess in jurisdiction. By grave abuse of discretion is meant such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power.[6]

In this case at bench, the Court finds no commission of a grave abuse of discretion in the rendition of the assailed CA decision dismissing petitioner's complaint for declaration of nullity of marriage under Article 36 of the Family Code. Upon close scrutiny of the records, we find nothing whimsical, arbitrary or capricious in its findings.

A petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides:

ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

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[5] Section 1, Rule 65 of the 1997 Rules of Civil Procedure reads as follows:

SEC. 1. *Petition for certiorari*—When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[6] *Salma v. Hon. Miro*, G.R. No. 168362, January 25, 2007, 512 SCRA 724.

Psychological incapacity required by Art. 36 must be characterized by (a) gravity, (b) juridical antecedence and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage. It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage. It must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[7] The Court likewise laid down the guidelines in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code, in *Republic v. Court of Appeals*.[8] Relevant to this petition are the following:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff; (2) the root cause of the psychological incapacity must be medically or clinically identified, alleged in the complaint, sufficiently proven by experts and clearly explained in the decision; (3) the incapacity must be proven to be existing at the "time of the celebration" of the marriage; (4) such incapacity must also be shown to be medically or clinically permanent or incurable; and (5) such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.

Guided by these pronouncements, it is the Court's considered view that petitioner's evidence failed to establish respondent May's psychological incapacity.

Petitioner's testimony did not prove the root cause, gravity and incurability of private respondent's condition. Even Dr. Nicdao-Basilio failed to show the root cause of her psychological incapacity. The root cause of the psychological incapacity must be identified as a psychological illness, its incapacitating nature

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[7] *Rodolfo A. Aspillaga v. Aurora A. Aspillaga*, G.R. No. 170925, October 26, 2009 citing *Santos v. Court of Appeals*, G.R. No. 112019, January 4, 1995, 240 SCRA 20.

[8] *Veronica Cabacungan Alcazar v. Rey C. Alcazar*, G.R. No. 174451, October 13, 2009.

fully explained and established by the totality of the evidence presented during trial.[9]

More importantly, the acts of private respondent do not even rise to the level of the "psychological incapacity" that the law requires. Private respondent's act of living an adulterous life cannot automatically be equated with a psychological disorder, especially when no specific evidence was shown that promiscuity was a trait already existing at the inception of marriage. Petitioner must be able to establish that respondent's unfaithfulness is a manifestation of a disordered personality, which makes her completely unable to discharge the essential obligations of the marital state.[10]

Doubtless, the private respondent was far from being a perfect wife and a good mother. She certainly had some character flaws. But these imperfections do not warrant a conclusion that she had a psychological malady at the time of the marriage that rendered her incapable of fulfilling her marital and family duties and obligations.[11]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[9] *Id.*

[10] *Id.*

[11] *Navales v. Navales*, G.R. No. 167523, June 27, 2008, 556 SCRA 272.

THIRD DIVISION

[G.R. No. 173365. April 15, 2010]

JULIO FLORES (deceased), substituted by his heirs; BENITO FLORES (deceased), substituted by his heirs; DOLORES FLORES and VIRGINIA FLORES-DALERE, represented by their Attorney-in-Fact, JIMENA TOMAS, *petitioners, vs.* **MARCIANO BAGAOISAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); HOMESTEADS; FIVE-YEAR PROHIBITORY PERIOD AGAINST ALIENATION OF LANDS ACQUIRED THROUGH HOMESTEAD PATENT; CONVEYANCE IN VIOLATION THEREOF IS NULL AND VOID; CASE AT BAR. — [T]he Deed of Confirmation and Quitclaim x x x is void for violating the five-year prohibitory period against alienation of lands acquired through homestead patent as provided under Section 118 of the Public Land Act. x x x We do not agree with the CA that the Deed of Confirmation and Quitclaim merely "confirmed" petitioners' non-ownership of the subject property. The deed uses the words "sell," "cede," "convey," "grant," and "transfer." These words admit of no other interpretation than that the subject property was indeed being transferred to Lazo. The use of the words "confirmation" and "quitclaim" in the title of the document was an obvious attempt to circumvent the prohibition imposed by law. Labeling the deed as a confirmation of non-ownership or as a quitclaim of rights would actually make no difference, as the effect would still be the alienation or conveyance of the property. The act of conveyance would still fall within the ambit of the prohibition. To validate such an arrangement would be to throw the door open to all possible fraudulent subterfuges and schemes that persons interested in land given to a homesteader may devise to circumvent and defeat the legal provisions prohibiting their alienation within five years from the issuance of the patent. x x x [T]he conveyance of a homestead before the expiration of the five-year prohibitory period following the issuance of

the homestead patent is null and void and cannot be enforced, for it is not within the competence of any citizen to barter away what public policy by law seeks to preserve. There is, therefore, no doubt that the Deed of Confirmation and Quitclaim, which was executed three years after the homestead patent was issued, is void and cannot be enforced.

2. **ID.; ID.; ID.; ID.; RATIONALE. —** It bears stressing that the law was enacted to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it. Its basic objective, as the Court had occasion to stress, is to promote public policy, that is to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace and order. Hence, any act which would have the effect of removing the property subject of the patent from the hands of a grantee will be struck down for being violative of the law.

3. **ID.; ID.; ID.; ORIGINAL CERTIFICATE OF TITLE ISSUED ON THE STRENGTH OF A HOMESTEAD PATENT; NATURE. —** An OCT issued on the strength of a homestead patent partakes of the nature of a certificate issued in a judicial proceeding and becomes indefeasible and incontrovertible upon the expiration of one year from the date of the promulgation of the Director of Lands' order for the issuance of the patent. After the lapse of such period, the sole remedy of a landowner, whose property has been wrongfully or erroneously registered in another's name is to file an action for reconveyance so long as the property has not passed to an innocent purchaser for value. In order that an action for reconveyance based on fraud may prosper, it is essential for the party seeking reconveyance to prove, by clear and convincing evidence, his title to the property and the fact of fraud.

4. **ID.; ID.; RIGHT TO A GOVERNMENT GRANT BY OPERATION OF LAW; CONDITIONS. —** The basic presumption is that lands of whatever classification belong to the State and evidence of a land grant must be "well-nigh incontrovertible." The Public Land Act requires that the possessor or his predecessors-in-interest must be in open, continuous, exclusive, and notorious possession and occupation of the land for at least thirty years. When these conditions

are complied with, the possessor is deemed to have acquired, by operation of law, a right to a government grant, without the necessity of a certificate of title being issued. The land ceases to be a part of the public domain and beyond the authority of the Director of Lands, such that the latter would have no more right to issue a homestead patent to another person.

5. ID.; ID.; HOMESTEADS; FIVE-YEAR PROHIBITORY PERIOD AGAINST ALIENATION OF LANDS ACQUIRED THROUGH HOMESTEAD PATENT; VIOLATION THEREOF, EFFECT; CASE AT BAR. — [T]he execution of the Deed of Confirmation and Quitclaim within the five-year prohibitory period also makes the homestead patent susceptible to cancellation, and the subject property being reverted to the public domain. It is the Solicitor General, on behalf of the government, who is by law mandated to institute an action for reversion. Should the Solicitor General decide to file such an action, it is in that action that petitioners' defenses, particularly their alleged lack of knowledge of the contents of the deed, will have to be resolved.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Bernardino Constantino for respondent.

D E C I S I O N

NACHURA, *J.*:

Petitioners seek a review of the March 29, 2006 Decision[1] and the June 20, 2006 Resolution of the Court of Appeals (CA), denying their motion for reconsideration.

The case involves a 13,552-square meter portion of a parcel of land covered by Original Certificate of Title (OCT) No. P-11880[2] in the name of the Heirs of Victor Flores, namely:

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[1] Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Roberto A. Barrios and Mario L. Guariña III, concurring; *rollo*, pp. 92-99.

[2] Exhibit A; Folder of Exhibits.

Julio, Benito, Dolores, and Virginia, herein petitioners. OCT No. P-11880 was issued pursuant to Homestead Patent No. 138892, given on November 12, 1973. This property is located in the Municipality of Piddig, Ilocos Norte.

On December 20, 1976, petitioners, together with their mother Luisa Viernes, executed a Deed of Confirmation and Quitclaim[3] in favor of Vicente T. Lazo. Through this document, petitioners agreed to "sell, cede, convey, grant, and transfer by way of QUITCLAIM" the subject property to Lazo. Thereafter, respondent, Marciano Bagaoisan, bought the subject property from Lazo, as evidenced by a Deed of Absolute Sale dated February 20, 1977.[4]

On April 4, 1983, Viernes and petitioner Virginia Flores-Dalere executed a *Palawag A Nasapataan* (Affidavit), attesting to the fact that they conveyed to Lazo the subject property through the Deed of Confirmation and Quitclaim. Affiants also attested that Lazo and his predecessors-in-interest had been in possession of the disputed portion since 1940 and that the same was mistakenly included in the patent application of Victor Flores.

On June 21, 1996, respondent filed an action for ownership, quieting of title, partition and damages against petitioners, praying that he be declared as the true owner of the subject property and that the entire property covered by OCT No. P-11880 be partitioned among them. In the Complaint, respondent asserted that he was a tenant of Lazo and that he had been working on the subject property since time immemorial. He said that, since he bought the property in 1977, he possessed the land as owner and paid real property tax thereon. He claimed that the subject property was erroneously covered by OCT No. P-11880 and that petitioners have previously recognized such fact, considering that they executed an affidavit acknowledging the erroneous inclusion of the property in their title. He averred that, lately, petitioners had denied his ownership of the land and asserted

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[3] Exhibit B; Folder of Exhibits.

[4] Exhibit A-5; Folder of Exhibits.

their ownership thereof by working and harvesting the crops thereon.[5]

In answer, petitioners stated that they did not relinquish ownership or possession of the land to Lazo. While admitting that they executed the Deed of Confirmation and Quitclaim in favor of Lazo, petitioners claimed that they were misled into signing the same, with Lazo taking advantage of their lack of education. Petitioners contended that it was too late for respondent to assert title to the disputed portion because the title covering the same had already become indefeasible one year after it was issued.[6]

On February 3, 2000, the Regional Trial Court rendered a decision, disposing as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the defendants, jointly and severally:

1. To recognize plaintiff Marciano Bagaoisan as owner of the 13,552 sq.m. parcel of land situated in Barrio Maab-abucay (now Estancia) Municipality of Piddig, Ilocos Norte;

2. To cease and desist from further possession of said parcel of land and to immediately reconvey the same to plaintiff;

3. To pay said plaintiff such amount as would be the peso equivalent of 100 cavanes of palay per year, for the loss of harvest he incurred in 1994, 1995, 1996, 1997, 1998 and 1999, computed as the price then obtaining in said years; and

4. To pay plaintiff the amount of ₱20,000.00 as reasonable attorney's fees.

No pronouncement as to costs.

SO ORDERED.[7]

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[5] Records, pp. 1-2.

[6] *Id.* at 17-18.

[7] *Rollo,* pp. 60-61.

On appeal, the CA upheld the validity of the Deed of Confirmation and Quitclaim. In light of petitioners' admission that they signed the deed after it was read to them, the CA dismissed their assertion that they did not know the contents of the document. It further declared that the deed merely confirmed petitioners' non-ownership of the subject property and it did not involve an alienation or encumbrance. Accordingly, it concluded that the five-year prohibition against alienation of a property awarded through homestead patent did not apply.

The CA likewise rejected petitioners' contention that the action was barred by prescription or laches. Citing *Vital v. Anore*,[8] the CA held that where the registered owner knew that the property described in the patent and the certificate of title belonged to another, any statute barring an action by the real owner would not apply, and the true owner might file an action to settle the issue of ownership.

The dispositive portion of the assailed March 29, 2006 Decision reads:

> WHEREFORE, the appeal is hereby DISMISSED for lack of sufficient merit. The assailed 3 February 2000 decision by the Regional Trial Court, Laoag City, in Civil Case No. 11048-14 is hereby AFFIRMED.
>
> SO ORDERED.[9]

The CA likewise denied petitioners' motion for reconsideration in its Resolution dated June 20, 2006.[10]

Consequently, petitioners filed this petition for review, insisting that the Deed of Confirmation and Quitclaim is void as its contents were not fully explained to them, and it violates Section 118 of the Public Land Act (Commonwealth Act No. 141), which prohibits the alienation of lands acquired through a homestead patent.

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[8] 90 Phil. 855 (1952).

[9] *Rollo,* pp. 98-99.

[10] CA *rollo,* p. 113.

The petition is meritorious.

Without going into petitioners' allegation that they were unaware of the contents of the Deed of Confirmation and Quitclaim, we nonetheless hold that the deed is void for violating the five-year prohibitory period against alienation of lands acquired through homestead patent as provided under Section 118 of the Public Land Act, which states:

> Sec. 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent and grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.
>
> No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after the issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds.

We do not agree with the CA that the Deed of Confirmation and Quitclaim merely "confirmed" petitioners' non-ownership of the subject property. The deed uses the words "sell," "cede," "convey," "grant," and "transfer." These words admit of no other interpretation than that the subject property was indeed being transferred to Lazo.

The use of the words "confirmation" and "quitclaim" in the title of the document was an obvious attempt to circumvent the prohibition imposed by law. Labeling the deed as a confirmation of non-ownership or as a quitclaim of rights would actually make no difference, as the effect would still be the alienation or conveyance of the property. The act of conveyance would still fall within the ambit of the prohibition. To validate such an arrangement would be to throw the door open to all possible fraudulent subterfuges and schemes that persons interested in land given to a homesteader may devise to circumvent and defeat

the legal provisions prohibiting their alienation within five years from the issuance of the patent.[11]

It bears stressing that the law was enacted to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it.[12] Its basic objective, as the Court had occasion to stress, is to promote public policy, that is to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace and order.[13] Hence, any act which would have the effect of removing the property subject of the patent from the hands of a grantee will be struck down for being violative of the law.

To repeat, the conveyance of a homestead before the expiration of the five-year prohibitory period following the issuance of the homestead patent is null and void and cannot be enforced, for it is not within the competence of any citizen to barter away what public policy by law seeks to preserve.[14] There is, therefore, no doubt that the Deed of Confirmation and Quitclaim, which was executed three years after the homestead patent was issued, is void and cannot be enforced.

Furthermore, respondent failed to present sufficient evidence to surmount the conclusiveness and indefeasibility of the certificate of title.

An OCT issued on the strength of a homestead patent partakes of the nature of a certificate issued in a judicial proceeding and becomes indefeasible and incontrovertible upon the expiration of one year from the date of the promulgation of the Director

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[11] *Pangilinan v. Ramos*, G.R. No. L-44617, January 23, 1990, 181 SCRA 350, 358.

[12] *Heirs of Venancio Bajenting v. Bañez*, G.R. No. 166190, September 20, 2006, 502 SCRA 531, 553.

[13] *Id*.

[14] *De Romero v. Court of Appeals*, 377 Phil.189, 201 (1999).

of Lands' order for the issuance of the patent.[15] After the lapse of such period, the sole remedy of a landowner, whose property has been wrongfully or erroneously registered in another's name is to file an action for reconveyance so long as the property has not passed to an innocent purchaser for value.[16] In order that an action for reconveyance based on fraud may prosper, it is essential for the party seeking reconveyance to prove, by clear and convincing evidence, his title to the property and the fact of fraud.[17]

Respondent did not allege in his complaint or prove during the trial that fraud attended the registration of the subject property in petitioners' names. In fact, there was no allegation as to how petitioners were able to secure title to the property despite the alleged ownership of respondent's predecessor.

More importantly, respondent failed to prove that he has title to the subject property. He merely asserted that his predecessors-in-interest had been in possession of the property since 1940. The basic presumption is that lands of whatever classification belong to the State and evidence of a land grant must be "well-nigh incontrovertible." The Public Land Act requires that the possessor or his predecessors-in-interest must be in open, continuous, exclusive, and notorious possession and occupation of the land for at least thirty years. When these conditions are complied with, the possessor is deemed to have acquired, by operation of law, a right to a government grant, without the necessity of a certificate of title being issued. The land ceases to be a part of the public domain and beyond the authority of the Director of Lands,[18] such that the latter would have no more right to issue a homestead patent to another person.

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[15] *Buston-Arendain v. Gil,* G.R. No. 172585, June 26, 2008, 555 SCRA 561, 574.

[16] *Abejaron v. Nabasa,* G.R. No. 84831, June 20, 2001, 359 SCRA 47, 56-57.

[17] *Id.* at 57.

[18] *De Guzman v. Court of Appeals,* 442 Phil. 534, 548 (2002).

Respondent merely established that he had been in possession of the property and that he had been paying real property taxes thereon since 1977. The only evidence on record attesting to the fact that respondent and his predecessors-in-interest had been in possession of the property since 1940 was the affidavit executed by some of petitioners. This, however, would not suffice.

In closing, it would be well to mention that the execution of the Deed of Confirmation and Quitclaim within the five-year prohibitory period also makes the homestead patent susceptible to cancellation, and the subject property being reverted to the public domain.[19] It is the Solicitor General, on behalf of the government, who is by law mandated to institute an action for reversion.[20] Should the Solicitor General decide to file such an action, it is in that action that petitioners' defenses, particularly their alleged lack of knowledge of the contents of the deed, will have to be resolved.

WHEREFORE, the petition is *GRANTED*. The March 29, 2006 Decision of the Court of Appeals and its June 20, 2006 Resolution are *REVERSED* and *SET ASIDE*. The complaint for ownership, quieting of title and damages is *DISMISSED*, without prejudice to an action for reversion that the Solicitor General may decide to file for the State.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Peralta, and *Mendoza, JJ.,* concur.

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[19] Section 124 of the Public Land Act.

[20] *Abejaron v. Nabasa, supra* note 16, at 67.

SECOND DIVISION

[G.R. No. 165133. April 19, 2010]

SPOUSES JOSELINA ALCANTARA AND ANTONIO ALCANTARA, and SPOUSES JOSEFINO RUBI AND ANNIE DISTOR- RUBI, *petitioners, vs.* **BRIGIDA L. NIDO, as attorney-in-fact of REVELEN N. SRIVASTAVA,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; SALE OF IMMOVABLE PROPERTY THROUGH AN AGENT; WRITTEN AUTHORITY, REQUIRED; CASE AT BAR. — Article 1874 of the Civil Code explicitly requires a written authority before an agent can sell an immovable property. Based on a review of the records, there is absolutely no proof of respondent's written authority to sell the lot to petitioners. In fact, during the pre-trial conference, petitioners admitted that at the time of the negotiation for the sale of the lot, petitioners were of the belief that respondent was the owner of lot. Petitioners only knew that Revelen was the owner of the lot during the hearing of this case. Consequently, the sale of the lot by respondent who did not have a written authority from Revelen is void. A void contract produces no effect either against or in favor of anyone and cannot be ratified.

2. ID.; ID.; ID.; SPECIAL POWER OF ATTORNEY; NECESSARY IN CONTRACTS BY WHICH OWNERSHIP OF AN IMMOVABLE IS TRANSMITTED OR ACQUIRED FOR A VALUABLE CONSIDERATION. — A special power of attorney is also necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired for a valuable consideration. Without an authority in writing, respondent cannot validly sell the lot to petitioners. Hence, any "sale" in favor of the petitioners is void.

3. ID.; ID.; VALID CONTRACT; REQUISITES. — Article 1318 of the Civil Code enumerates the requisites for a valid contract, namely: 1. consent of the contracting parties; 2. object certain which is the subject matter of the contract; 3. cause of the obligation which is established.

4. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF OFFICIAL RECORD; GENERAL POWER OF ATTORNEY EXECUTED AND ACKNOWLEDGED IN THE UNITED STATES OF AMERICA, WHEN ADMITTED IN EVIDENCE. — On 25 March 1994, Revelen executed a General Power of Attorney constituting respondent as her attorney-in-fact and authorizing her to enter into any and all contracts and agreements on Revelen's behalf. The General Power of Attorney was notarized by Larry A. Reid, Notary Public in California, U.S.A. x x x Since the General Power of Attorney was executed and acknowledged in the United States of America, it cannot be admitted in evidence unless it is certified as such in accordance with the Rules of Court by an officer in the foreign service of the Philippines stationed in the United States of America. Hence, this document has no probative value.

5. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; CONTRACT MADE WITH AN AGENT; AGENCY MUST BE ESTABLISHED BY CLEAR AND SPECIFIC PROOF BEFORE CLAIM FOR SPECIFIC PERFORMANCE CAN BE SOUGHT. — Petitioners are not entitled to claim for specific performance. It must be stressed that when specific performance is sought of a contract made with an agent, the agency must be established by clear, certain and specific proof. To reiterate, there is a clear absence of proof that Revelen authorized respondent to sell her lot.

6. REMEDIAL LAW; BATAS PAMBANSA BILANG 129, AS AMENDED BY REPUBLIC ACT NO. 7691; METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS; JURISDICTION IN CIVIL CASES. — Section 33 of *Batas Pambansa Bilang* 129, as amended by Republic Act No. 7691 provides: "Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* — Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise: x x x (3) Exclusive original jurisdiction in all civil actions which involve title to, possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos

(₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: x x x" In *Geonzon Vda. de Barrera v. Heirs of Vicente Legaspi*, the Court explained: "Before the amendments introduced by Republic Act No. 7691, the plenary action of *accion publiciana* was to be brought before the regional trial court. With the modifications introduced by R.A. No. 7691 in 1994, the jurisdiction of the first level courts has been expanded to include jurisdiction over other real actions where the assessed value does not exceed ₱20,000, ₱50,000 where the action is filed in Metro Manila. The first level courts thus have exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria* where the assessed value of the real property does not exceed the aforestated amounts. Accordingly, the jurisdictional element is the assessed value of the property. Assessed value is understood to be 'the worth or value of property established by taxing authorities on the basis of which the tax rate is applied. Commonly, however, it does not represent the true or market value of the property.'"

7. ID.; ID.; ID.; ID.; CASE AT BAR. — The appellate court correctly ruled that even if the complaint filed with the RTC involves a question of ownership, the MTC still has jurisdiction because the assessed value of the whole lot as stated in Tax Declaration No. 09-0742 is ₱4,890. The MTC cannot be deprived of jurisdiction over an ejectment case based merely on the assertion of ownership over the litigated property, and the underlying reason for this rule is to prevent any party from trifling with the summary nature of an ejectment suit.

8. ID.; CIVIL PROCEDURE; MOTION TO DISMISS FOR LACK OF JURISDICTION; MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS. — The general rule is that dismissal of a case for lack of jurisdiction may be raised at any stage of the proceedings since jurisdiction is conferred by law. The lack of jurisdiction affects the very authority of the court to take cognizance of and to render judgment on the action; otherwise, the inevitable consequence would make the court's decision a "lawless" thing. Since the RTC has no jurisdiction over the complaint filed, all the proceedings as well as the Decision of 17 June 2002 are void. The complaint should perforce be dismissed.

APPEARANCES OF COUNSEL

Rodrigo L. Yuson for petitioners.
A.R. Fulgado & Associates for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Spouses Antonio and Joselina Alcantara and Spouses Josefino and Annie Rubi (petitioners) filed this Petition for Review[1] assailing the Court of Appeals' (appellate court) Decision[2] dated 10 June 2004 as well as the Resolution[3] dated 17 August 2004 in CA-G.R. CV No. 78215. In the assailed decision, the appellate court reversed the 17 June 2002 Decision[4] of Branch 69 of the Regional Trial Court of Binangonan, Rizal (RTC) by dismissing the case for recovery of possession with damages and preliminary injunction filed by Brigida L. Nido (respondent), in her capacity as administrator and attorney-in-fact of Revelen N. Srivastava (Revelen).

The Facts

Revelen, who is respondent's daughter and of legal age, is the owner of an unregistered land with an area of 1,939 square meters located in Cardona, Rizal. Sometime in March 1984, respondent accepted the offer of petitioners to purchase a 200-square meter portion of Revelen's lot (lot) at ₱200 per square

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 20-29. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Rebecca De Guia-Salvador, and Jose C. Reyes, Jr., concurring.

[3] *Id.* at 33. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Rebecca De Guia-Salvador, and Jose C. Reyes, Jr., concurring.

[4] CA *rollo*, pp. 56-64. Penned by RTC Judge Paterno G. Tiamson.

meter. Petitioners paid ₱3,000 as downpayment and the balance was payable on installment. Petitioners constructed their houses in 1985. In 1986, with respondent's consent, petitioners occupied an additional 150 square meters of the lot. By 1987, petitioners had already paid ₱17,500[5] before petitioners defaulted on their installment payments.

On 11 May 1994, respondent, acting as administrator and attorney-in-fact of Revelen, filed a complaint for recovery of possession with damages and prayer for preliminary injunction against petitioners with the RTC.

The RTC's Ruling

The RTC stated that based on the evidence presented, Revelen owns the lot and respondent was verbally authorized to sell 200 square meters to petitioners. The RTC ruled that since respondent's authority to sell the land was not in writing, the sale was void under Article 1874[6] of the Civil Code.[7] The RTC ruled that rescission is the proper remedy.[8]

On 17 June 2002, the RTC rendered its decision, the dispositive portion reads:

> WHEREFORE, judgment is rendered in favor of plaintiff and against the defendants, by —
>
> 1. Declaring the contract to sell orally agreed by the plaintiff Brigida Nido, in her capacity as representative or agent of her daughter Revelen Nido Srivastava, VOID and UNENFORCEABLE.
>
> 2. Ordering the parties, upon finality of this judgment, to have mutual restitution — the defendants and all persons claiming under them to peacefully vacate and surrender to the plaintiff

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[5] Records, p. 79.

[6] Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing, otherwise the sale shall be void.

[7] CA *rollo*, p. 60.

[8] *Id.* at 61.

the possession of the subject lot covered by TD No. 09-0742 and its derivative Tax Declarations, together with all permanent improvements introduced thereon, and all improvements built or constructed during the pendency of this action, in bad faith; and the plaintiff, to return the sum of ₱17,500.00, the total amount of the installment on the land paid by defendant; the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated.

3. Ordering the defendants to pay plaintiff the sum of ₱20,000.00 as attorney's fees, plus ₱15,000.00 as actual litigation expenses, plus the costs of suit.

SO ORDERED.[9]

The Appellate Court's Ruling

On 5 January 2004, petitioners appealed the trial court's Decision to the appellate court. In its decision dated 10 June 2004, the appellate court reversed the RTC decision and dismissed the civil case.[10]

The appellate court explained that this is an unlawful detainer case. The prayer in the complaint and amended complaint was for recovery of possession and the case was filed within one year from the last demand letter. Even if the complaint involves a question of ownership, it does not deprive the Municipal Trial Court (MTC) of its jurisdiction over the ejectment case. Petitioners raised the issue of lack of jurisdiction in their Motion to Dismiss and Answer before the RTC.[11] The RTC denied the Motion to Dismiss and assumed jurisdiction over the case because the issues pertain to a determination of the real agreement between the parties and rescission of the contract to sell the property.[12]

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[9] *Id.* at 63-64.

[10] *Rollo*, p. 28.

[11] *Id.* at 25-26.

[12] Records, p. 66.

The appellate court added that even if respondent's complaint is for recovery of possession or *accion publiciana*, the RTC still has no jurisdiction to decide the case. The appellate court explained:

> Note again that the complaint was filed on 11 May 1994. By that time, Republic Act No. 7691 was already in effect. Said law took effect on 15 April 1994, fifteen days after its publication in the Malaya and in the Time Journal on 30 March 1994 pursuant to Sec. 8 of Republic Act No. 7691.
>
> Accordingly, Sec. 33 of *Batas Pambansa* 129 was amended by Republic Act No. 7691 giving the Municipal Trial Court the exclusive original jurisdiction over all civil actions involving title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed ₱20,000 or, in civil actions in Metro Manila, where such assessed value does not exceed ₱50,000, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs.
>
> At bench, the complaint alleges that the whole 1,939- square meter lot of Revelen N. Srivastava is covered by Tax Declaration No. 09-0742 (Exh. "B", p. 100, Records) which gives its assessed value of the whole lot of ₱4,890.00. Such assessed value falls within the exclusive original prerogative or jurisdiction of the first level court and, therefore, the Regional Trial Court *a quo* has no jurisdiction to try and decided the same.[13]

The appellate court also held that respondent, as Revelen's agent, did not have a written authority to enter into such contract of sale; hence, the contract entered into between petitioners and respondent is void. A void contract creates no rights or obligations or any juridical relations. Therefore, the void contract cannot be the subject of rescission.[14]

Aggrieved by the appellate court's Decision, petitioners elevated the case before this Court.

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[13] *Rollo*, pp. 26-27.

[14] *Id.* at 27-28.

Issues

Petitioners raise the following arguments:

1. The appellate court gravely erred in ruling that the contract entered into by respondent, in representation of her daughter, and former defendant Eduardo Rubi (deceased), is void; and
2. The appellate court erred in not ruling that the petitioners are entitled to their counterclaims, particularly specific performance.[15]

Ruling of the Court

We deny the petition.

Petitioners submit that the sale of land by an agent who has no written authority is not void but merely voidable given the spirit and intent of the law. Being only voidable, the contract may be ratified, expressly or impliedly. Petitioners argue that since the contract to sell was sufficiently established through respondent's admission during the pre-trial conference, the appellate court should have ruled on the matter of the counterclaim for specific performance.[16]

Respondent argues that the appellate court cannot lawfully rule on petitioners' counterclaim because there is nothing in the records to sustain petitioners' claim that they have fully paid the price of the lot.[17] Respondent points out that petitioners admitted the lack of written authority to sell. Respondent also alleges that there was clearly no meeting of the minds between the parties on the purported contract of sale.[18]

Sale of Land through an Agent

Articles 1874 and 1878 of the Civil Code provide:

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[15] *Id.* at 15.

[16] *Id.* at 15-16.

[17] *Id.* at 56.

[18] *Id.* at 58.

Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x x x x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x x x x x x x

Article 1874 of the Civil Code explicitly requires a written authority before an agent can sell an immovable property. Based on a review of the records, there is absolutely no proof of respondent's written authority to sell the lot to petitioners. In fact, during the pre-trial conference, petitioners admitted that at the time of the negotiation for the sale of the lot, petitioners were of the belief that respondent was the owner of lot.[19] Petitioners only knew that Revelen was the owner of the lot during the hearing of this case. Consequently, the sale of the lot by respondent who did not have a written authority from Revelen is void. A void contract produces no effect either against or in favor of anyone and cannot be ratified.[20]

A special power of attorney is also necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired for a valuable consideration. Without an authority in writing, respondent cannot validly sell the lot to petitioners. Hence, any "sale" in favor of the petitioners is void.

Our ruling in *Dizon v. Court of Appeals*[21] is instructive:

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[19] *Id.* at 12.

[20] *Roberts v. Papio*, G.R. No. 166714, 9 February 2007, 515 SCRA 346, 371.

[21] 444 Phil. 161, 165-166 (2003) citing *Cosmic Lumber Corp. v. Court of Appeals*, 332 Phil. 948, 957-958 (1996).

When the sale of a piece of land or any interest thereon is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. Thus the authority of an agent to execute a contract for the sale of real estate must be conferred in writing and must give him specific authority, either to conduct the general business of the principal or to execute a binding contract containing terms and conditions which are in the contract he did execute. A special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration. The express mandate required by law to enable an appointee of an agency (couched) in general terms to sell must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the act mentioned. For the principal to confer the right upon an agent to sell real estate, a power of attorney must so express the powers of the agent in clear and unmistakable language. When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document.

Further, Article 1318 of the Civil Code enumerates the requisites for a valid contract, namely:

1. consent of the contracting parties;
2. object certain which is the subject matter of the contract;
3. cause of the obligation which is established.

Respondent did not have the written authority to enter into a contract to sell the lot. As the consent of Revelen, the real owner of the lot, was not obtained in writing as required by law, no contract was perfected. Consequently, petitioners failed to validly acquire the lot.

General Power of Attorney

On 25 March 1994, Revelen executed a General Power of Attorney constituting respondent as her attorney-in-fact and authorizing her to enter into any and all contracts and agreements on Revelen's behalf. The General Power of Attorney was notarized by Larry A. Reid, Notary Public in California, U.S.A.

Unfortunately, the General Power of Attorney presented as "Exhibit C"[22] in the RTC cannot also be the basis of respondent's written authority to sell the lot.

Section 25, Rule 132 of the Rules of Court provides:

> Sec. 25. *Proof of public or official record.* — An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

In *Teoco v. Metropolitan Bank and Trust Company*,[23] quoting *Lopez v. Court of Appeals*,[24] we explained:

> From the foregoing provision, when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office. A city judge-notary who notarized the document, as in this case, cannot issue such certification.[25]

Since the General Power of Attorney was executed and acknowledged in the United States of America, it cannot be admitted in evidence unless it is certified as such in accordance with the Rules of Court by an officer in the foreign service of

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[22] Records, pp. 102-103.

[23] G.R. No. 162333, 23 December 2008, 575 SCRA 82.

[24] 240 Phil. 811 (1987).

[25] *Supra* note 23 at 95-96.

the Philippines stationed in the United States of America. Hence, this document has no probative value.

Specific Performance

Petitioners are not entitled to claim for specific performance. It must be stressed that when specific performance is sought of a contract made with an agent, the agency must be established by clear, certain and specific proof.[26] To reiterate, there is a clear absence of proof that Revelen authorized respondent to sell her lot.

Jurisdiction of the RTC

Section 33 of *Batas Pambansa Bilang* 129,[27] as amended by Republic Act No. 7691 provides:

> Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* — Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:
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> x x x x x x x x x
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> (3) Exclusive original jurisdiction in all civil actions which involve title to, possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: x x x

In *Geonzon Vda. de Barrera v. Heirs of Vicente Legaspi*,[28] the Court explained:

> Before the amendments introduced by Republic Act No. 7691, the plenary action of *accion publiciana* was to be brought before

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[26] *Litonjua, Jr. v. Eternit Corporation*, G.R. No. 144805, 8 June 2006, 490 SCRA 204, 218-219.

[27] The Judiciary Reorganization Act of 1980.

[28] G.R. No. 174346, 12 September 2008, 565 SCRA 192, 197.

the regional trial court. With the modifications introduced by R.A. No. 7691 in 1994, the jurisdiction of the first level courts has been expanded to include jurisdiction over other real actions where the assessed value does not exceed ₱20,000, ₱50,000 where the action is filed in Metro Manila. The first level courts thus have exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria* where the assessed value of the real property does not exceed the aforestated amounts. Accordingly, the jurisdictional element is the assessed value of the property.

Assessed value is understood to be "the worth or value of property established by taxing authorities on the basis of which the tax rate is applied. Commonly, however, it does not represent the true or market value of the property."

The appellate court correctly ruled that even if the complaint filed with the RTC involves a question of ownership, the MTC still has jurisdiction because the assessed value of the whole lot as stated in Tax Declaration No. 09-0742 is ₱4,890.[29] The MTC cannot be deprived of jurisdiction over an ejectment case based merely on the assertion of ownership over the litigated property, and the underlying reason for this rule is to prevent any party from trifling with the summary nature of an ejectment suit.[30]

The general rule is that dismissal of a case for lack of jurisdiction may be raised at any stage of the proceedings since jurisdiction is conferred by law. The lack of jurisdiction affects the very authority of the court to take cognizance of and to render judgment on the action; otherwise, the inevitable consequence would make the court's decision a "lawless" thing.[31] Since the RTC has no jurisdiction over the complaint filed, all the proceedings as well as the Decision of 17 June 2002 are void. The complaint should perforce be dismissed.

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[29] Records, p. 100.

[30] *Sudaria v. Quiambao*, G.R. No. 164305, 20 November 2007, 537 SCRA 689, 697.

[31] *Municipality of Sta. Fe v. Municipality of Aritao*, G.R. No. 140474, 21 September 2007, 533 SCRA 586, 599.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 78215.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 166829. April 19, 2010]

TFS, INCORPORATED, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; REPUBLIC ACT NO. 9282; COURT OF TAX APPEALS (CTA); DECISIONS OR RESOLUTIONS ISSUED BY THE DIVISIONS OF THE CTA SHALL BE REVIEWED BY THE CTA *EN BANC.* — Jurisdiction to review decisions or resolutions issued by the Divisions of the CTA is no longer with the CA but with the CTA *En Banc.* This rule is embodied in Section 11 of RA 9282, which provides that: "SECTION 11. Section 18 of the same Act is hereby amended as follows: SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act. **A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.*"**

2. ID.; CIVIL PROCEDURE; APPEALS; MUST BE PERFECTED WITHIN THE REGLEMENTARY PERIOD PROVIDED BY LAW; EXCEPTIONS; CASE AT BAR. — It is settled that

an appeal must be perfected within the reglementary period provided by law; otherwise, the decision becomes final and executory. However, as in all cases, there are exceptions to the strict application of the rules for perfecting an appeal. We are aware of our rulings in *Mactan Cebu International Airport Authority v. Mangubat* and in *Alfonso v. Sps. Andres*, wherein we excused the late filing of the notices of appeal because at the time the said notices of appeal were filed, the new rules applicable therein had just been recently issued. We noted that judges and lawyers need time to familiarize themselves with recent rules. x x x [A]lthough strict compliance with the rules for perfecting an appeal is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business, strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage may nevertheless warrant the suspension of the rules. In the instant case, we are constrained to disregard procedural rules because we cannot in conscience allow the government to collect deficiency VAT from petitioner considering that the government has no right at all to collect or to receive the same. Besides, dismissing this case on a mere technicality would lead to the unjust enrichment of the government at the expense of petitioner, which we cannot permit. Technicalities should never be used as a shield to perpetrate or commit an injustice.

3. ID.; PROCEDURAL RULES; WHEN RELAXED; CASE AT BAR. — In the instant case, RA 9282 took effect on April 23, 2004, while petitioner filed its Petition for Review on *Certiorari* with the CA on August 24, 2004, or four months after the effectivity of the law. By then, petitioner's counsel should have been aware of and familiar with the changes introduced by RA 9282. Thus, we find petitioner's argument on the newness of RA 9282 a bit of a stretch. Petitioner likewise cannot validly claim that its erroneous filing of the petition with the CA was justified by the absence of the CTA rules and regulations and the incomplete membership of the CTA *En Banc* as these did not defer the effectivity and implementation of RA 9282. In fact, under Section 2 of RA 9282, the presence of four justices already constitutes a quorum for *En Banc* sessions and the affirmative votes of four members of the CTA *En Banc* are sufficient to render judgment. Thus, to us, the petitioner's excuse of "inadvertence or honest oversight of counsel" deserves scant consideration. However, we will

overlook this procedural lapse in the interest of substantial justice. Although a client is bound by the acts of his counsel, including the latter's mistakes and negligence, a departure from this rule is warranted where such mistake or neglect would result in serious injustice to the client. Procedural rules may thus be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Such is the situation in this case.

4. TAXATION; VALUE-ADDED TAX; IMPOSITION THEREOF ON PAWNSHOPS FOR THE TAX YEARS 1996 TO 2002, SPECIFICALLY DEFERRED BY LAW; CASE AT BAR. — In *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*, we ruled that: "x x x Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; **however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically deferred by law, then petitioner is not liable for VAT during these tax years.** But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5%, as the case may be." Guided by the foregoing, petitioner is not liable for VAT for the year 1998. Consequently, the VAT deficiency assessment issued by the BIR against petitioner has no legal basis and must therefore be cancelled. In the same vein, the imposition of surcharge and interest must be deleted.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Only in highly meritorious cases, as in the instant case, may the rules for perfecting an appeal be brushed aside.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the November 18, 2004[1] Resolution of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 29 which dismissed petitioner's Petition for Review for having been filed out of time. Also assailed is the January 24, 2005[2] Resolution denying the motion for reconsideration.

Factual Antecedents

Petitioner TFS, Incorporated is a duly organized domestic corporation engaged in the pawnshop business. On January 15, 2002, petitioner received a Preliminary Assessment Notice (PAN)[3] for deficiency value added tax (VAT), expanded withholding tax (EWT), and compromise penalty in the amounts of ₱11,764,108.74, ₱183,898.02 and ₱25,000.00, respectively, for the taxable year 1998. Insisting that there was no basis for the issuance of PAN, petitioner through a letter[4] dated January 28, 2002 requested the Bureau of Internal Revenue (BIR) to withdraw and set aside the assessments.

In a letter-reply[5] dated February 7, 2002, respondent Commissioner of Internal Revenue (CIR) informed petitioner that a Final Assessment Notice (FAN)[6] was issued on January 25, 2002, and that petitioner had until February 22, 2002 within which to file a protest letter.

On February 20, 2002, petitioner protested the FAN in a letter[7] dated February 19, 2002.

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[1] *Rollo,* p. 50.

[2] *Id.* at 51-54.

[3] *Id.* at 82-83.

[4] *Id.* at 84-87.

[5] *Id.* at 88.

[6] *Id.* at 89-94.

[7] *Id.* at 95-98.

There being no action taken by the CIR, petitioner filed a Petition for Review[8] with the CTA on September 11, 2002, docketed as CTA Case No. 6535.

During trial, petitioner offered to compromise and to settle the assessment for deficiency EWT with the BIR. Hence, on September 24, 2003, it filed a Manifestation and Motion withdrawing its appeal on the deficiency EWT, leaving only the issue of VAT on pawnshops to be threshed out. Since no opposition was made by the CIR to the Motion, the same was granted by the CTA on November 4, 2003.

Ruling of the Court of the Tax Appeals

On April 29, 2004, the CTA rendered a Decision[9] upholding the assessment issued against petitioner in the amount of ₱11,905,696.32, representing deficiency VAT for the year 1998, inclusive of 25% surcharge and 20% deficiency interest, plus 20% delinquency interest from February 25, 2002 until full payment, pursuant to Sections 248 and 249(B) of the National Internal Revenue Code of 1997 (NIRC). The CTA ruled that pawnshops are subject to VAT under Section 108(A) of the NIRC as they are engaged in the sale of services for a fee, remuneration or consideration.[10]

Aggrieved, petitioner moved for reconsideration[11] but the motion was denied by the CTA in its Resolution dated July 20, 2004,[12] which was received by petitioner on July 30, 2004.

Ruling of the Court of Appeals

On August 16, 2004, petitioner filed before the Court of Appeals (CA) a Motion for Extension of Time to File Petition

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[8] *Id.* at 72-81.

[9] *Id.* at 100-111.

[10] *Id.* at 107.

[11] *Id.* at 112-125.

[12] *Id.* at 126.

for Review.[13] On August 24, 2004, it filed a Petition for Review[14] but it was dismissed by the CA in its Resolution[15] dated August 31, 2004, for lack of jurisdiction in view of the enactment of Republic Act No. 9282 (RA 9282).[16]

Ruling of the Court of Tax Appeals En Banc

Realizing its error, petitioner filed a Petition for Review[17] with the CTA *En Banc* on September 16, 2004. The petition, however, was dismissed for having been filed out of time per Resolution dated November 18, 2004. Petitioner filed a Motion for Reconsideration but it was denied in a Resolution dated January 24, 2005.

Hence, this petition.

Issues

In its Memorandum,[18] petitioner interposes the following issues:

WHETHER THE HONORABLE COURT OF TAX APPEALS *EN BANC* SHOULD HAVE GIVEN DUE COURSE TO THE PETITION FOR REVIEW AND NOT STRICTLY APPLIED THE TECHNICAL RULES OF PROCEDURE TO THE DETRIMENT OF JUSTICE.

WHETHER OR NOT PETITIONER IS SUBJECT TO THE 10% VAT.[19]

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[13] *Id.* at 128-132.

[14] *Id.* at 134-160.

[15] *Id.* at 161.

[16] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Sections of Republic Act No. 1125, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[17] *Rollo*, pp.162-189.

[18] *Id.* at 268-326.

[19] *Id.* at 274.

Petitioner's Arguments

Petitioner admits that it failed to timely file its Petition for Review with the proper court (CTA). However, it attributes the procedural lapse to the inadvertence or honest oversight of its counsel, who believed that at the time the petition was filed on August 24, 2004, the CA still had jurisdiction since the rules and regulations to implement the newly enacted RA 9282 had not yet been issued and the membership of the CTA *En Banc* was not complete. In view of these circumstances, petitioner implores us to reverse the dismissal of its petition and consider the timely filing of its petition with the CA, which previously exercised jurisdiction over appeals from decisions/resolutions of the CTA, as substantial compliance with the then recently enacted RA 9282.

Petitioner also insists that the substantive merit of its case outweighs the procedural infirmity it committed. It claims that the deficiency VAT assessment issued by the BIR has no legal basis because pawnshops are not subject to VAT as they are not included in the enumeration of services under Section 108(A) of the NIRC.

Respondent's Arguments

The CIR, on the other hand, maintains that since the petition was filed with the CTA beyond the reglementary period, the Decision had already attained finality and can no longer be opened for review. As to the issue of VAT on pawnshops, he opines that petitioner's liability is a matter of law; and in the absence of any provision providing for a tax exemption, petitioner's pawnshop business is subject to VAT.

Our Ruling

The petition is meritorious.

Jurisdiction to review decisions or resolutions issued by the Divisions of the CTA is no longer with the CA but with the CTA *En Banc*. This rule is embodied in Section 11 of RA 9282, which provides that:

SECTION 11. Section 18 of the same Act is hereby amended as follows:

SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.* (Emphasis supplied)

Procedural rules may be relaxed in the interest of substantial justice

It is settled that an appeal must be perfected within the reglementary period provided by law; otherwise, the decision becomes final and executory.[20] However, as in all cases, there are exceptions to the strict application of the rules for perfecting an appeal.[21]

We are aware of our rulings in *Mactan Cebu International Airport Authority v. Mangubat*[22] and in *Alfonso v. Sps. Andres*,[23] wherein we excused the late filing of the notices of appeal because at the time the said notices of appeal were filed, the new rules[24] applicable therein had just been recently issued. We noted that judges and lawyers need time to familiarize themselves with recent rules.

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[20] *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, G.R. No. 155844, July 14, 2008, 558 SCRA 148, 155-156.

[21] *Monreal v. Court of Appeals*, 204 Phil. 395, 401 (1982).

[22] 371 Phil. 393, 398-399 (1999).

[23] 439 Phil. 298, 306-307 (2002).

[24] On the alternative modes of service of pleading and the Revised Rules of Civil Procedure, respectively.

However, in *Cuevas v. Bais Steel Corporation*[25] we found that the relaxation of rules was unwarranted because the delay incurred therein was inexcusable. The subject SC Circular 39-98 therein took effect on September 1, 1998, but the petitioners therein filed their petition for *certiorari* five months after the circular took effect.

In the instant case, RA 9282 took effect on April 23, 2004, while petitioner filed its Petition for Review on *Certiorari* with the CA on August 24, 2004, or four months after the effectivity of the law. By then, petitioner's counsel should have been aware of and familiar with the changes introduced by RA 9282. Thus, we find petitioner's argument on the newness of RA 9282 a bit of a stretch.

Petitioner likewise cannot validly claim that its erroneous filing of the petition with the CA was justified by the absence of the CTA rules and regulations and the incomplete membership of the CTA *En Banc* as these did not defer the effectivity[26] and implementation of RA 9282. In fact, under Section 2 of RA 9282,[27] the presence of four justices already constitutes a quorum for *En Banc* sessions and the affirmative votes of four members of the CTA *En Banc* are sufficient to render judgment.[28] Thus, to us, the petitioner's excuse of "inadvertence or honest oversight of counsel" deserves scant consideration.

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[25] 439 Phil. 793, 805-806 (2002).

[26] SECTION 19. *Effectivity Clause*. — This Act shall take effect after fifteen (15) days following its publication in at least two newspapers of general circulation.

[27] Now Amended by RA 9503, "An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and For Other Purposes," Approved June 12, 2008.

[28] Section 2 of the same Act is hereby amended to read as follows:

"SEC. 2. Sitting *En Banc* or Division; Quorum; Proceedings. — The CTA may sit en banc or in two (2) Divisions, each Division consisting of three (3) Justices.

However, we will overlook this procedural lapse in the interest of substantial justice. Although a client is bound by the acts of his counsel, including the latter's mistakes and negligence, a departure from this rule is warranted where such mistake or neglect would result in serious injustice to the client.[29] Procedural rules may thus be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.[30] Such is the situation in this case.

Imposition of VAT on pawnshops for the tax years 1996 to 2002 was deferred

Petitioner disputes the assessment made by the BIR for VAT deficiency in the amount of ₱11,905,696.32 for taxable year 1998 on the ground that pawnshops are not included in the coverage of VAT.

We agree.

In *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*,[31] we ruled that:

x x x Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; **however, with the levy, assessment and collection of VAT from non-bank**

Four (4) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a Division: Provided, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily therein.

The affirmative votes of four (4) members of the Court *en banc* or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution."

[29] *Meneses v. Secretary of Agrarian Reform,* G.R. No. 156304, October 23, 2006, 505 SCRA 90, 97-98.

[30] *Spouses Ello v. Court of Appeals*, 499 Phil. 398, 411 (2005), citing *Sebastian v. Morales*, 445 Phil. 595, 605 (2003).

[31] G.R. No. 174134, July 30, 2008, 560 SCRA 606, 621.

financial intermediaries being specifically deferred by law, then petitioner is not liable for VAT during these tax years. But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5%, as the case may be. (Emphasis in the original text)

Guided by the foregoing, petitioner is not liable for VAT for the year 1998. Consequently, the VAT deficiency assessment issued by the BIR against petitioner has no legal basis and must therefore be cancelled. In the same vein, the imposition of surcharge and interest must be deleted.[32]

In fine, although strict compliance with the rules for perfecting an appeal is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business, strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage may nevertheless warrant the suspension of the rules.[33] In the instant case, we are constrained to disregard procedural rules because we cannot in conscience allow the government to collect deficiency VAT from petitioner considering that the government has no right at all to collect or to receive the same. Besides, dismissing this case on a mere technicality would lead to the unjust enrichment of the government at the expense of petitioner, which we cannot permit. Technicalities should never be used as a shield to perpetrate or commit an injustice.

WHEREFORE, the Petition is *GRANTED*. The assailed November 18, 2004 Resolution of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 29 which dismissed petitioner's Petition for Review for having been filed out of time, and the January 24, 2005 Resolution which denied the motion for

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[32] See *Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 179085, January 21, 2010.

[33] *Villanueva v. Court of Appeals,* G.R. No. 99357, January 27, 1992, 205 SCRA 537, 545.

reconsideration, are hereby *REVERSED* and *SET ASIDE*. The assessment for deficiency Value Added Tax for the taxable year 1998, including surcharges, deficiency interest and delinquency interest, are hereby *CANCELLED* and *SET ASIDE*.

SO ORDERED.

Carpio (Chairperson), Nachura,[*] *Abad,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170207. April 19, 2010]

VICENTE CAWIS (substituted by his son, EMILIO CAWIS), PEDRO BACLANGEN, FELIZA DOMILIES, IVAN MANDI-IT *a.k.a.* IVAN MANDI-IT LUPADIT, DOMINGO CAWIS and GERARD LIBATIQUE, *petitioners, vs.* **HON. ANTONIO CERILLES, in his capacity as the DENR Secretary, HON. MANUEL GEROCHI, in his capacity as the Director, Lands, Management Bureau, and MA. EDELIZA PERALTA,** *respondents.*

SYLLABUS

1. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); ACTION FOR REVERSION OF PUBLIC LAND; OBJECTIVE. — [W]e must point out that petitioners' complaint questioning the validity of the sales patent and the original certificate of title over Lot No. 47 is, in reality, a reversion suit. The objective of an action for reversion of public land is the cancellation of the certificate of title and the resulting reversion of the land covered by the title to the State. This is

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[*] In lieu of Associate Justice Arturo D. Brion, per Raffle dated April 12, 2010.

why an action for reversion is oftentimes designated as an annulment suit or a cancellation suit.

2. ID.; ID.; ID.; SHALL BE INSTITUTED BY THE SOLICITOR GENERAL OR THE OFFICER ACTING IN HIS STEAD. — Section 101 of the Public Land Act clearly states: "SEC. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines." Even assuming that private respondent indeed acquired title to Lot No. 47 in bad faith, only the State can institute reversion proceedings, pursuant to Section 101 of the Public Land Act and our ruling in *Alvarico v. Sola.* Private persons may not bring an action for reversion or any action which would have the effect of canceling a land patent and the corresponding certificate of title issued on the basis of the patent, such that the land covered thereby will again form part of the public domain. Only the OSG or the officer acting in his stead may do so. Since the title originated from a grant by the government, its cancellation is a matter between the grantor and the grantee.

3. ID.; ID.; TOWN SITE RESERVATIONS; SALES PATENT; ACTUAL FRAUD IN THE ACQUISITION OF A TITLE BASED ON A SALES PATENT; NEED NOT BE PASSED UPON. — [I]n *Urquiaga v. CA*, this Court held that there is no need to pass upon any allegation of actual fraud in the acquisition of a title based on a sales patent. Private persons have no right or interest over land considered public at the time the sales application was filed. They have no personality to question the validity of the title. We further stated that granting, for the sake of argument, that fraud was committed in obtaining the title, it is the State, in a reversion case, which is the proper party to file the necessary action.

4. ID.; ID.; ID.; ID.; ID.; MAY BE DIRECTLY RESOLVED BY THE COURT IN THE EXERCISE OF ITS EQUITY JURISDICTION. — [T]he Court, in the exercise of its equity jurisdiction, may directly resolve the issue of alleged fraud in the acquisition of a sales patent although the action is instituted by a private person. x x x [F]raud cannot be imputed to Andrada. His supposed failure to introduce improvements on Lot No. 47 is simply due to petitioners' refusal to vacate the lot. It appears

from the factual finding of the Director of Lands that petitioners are the ones in bad faith.

5. ID.; REPUBLIC ACT NO. 6099; APPLICATION FOR A SALES PATENT BY OCCUPANTS, REQUIRED IN ORDER TO AVAIL OF THE BENEFITS OF THE LAW; CASE AT BAR. — Contrary to petitioners' claim, R.A. No. 6099 did not automatically confer on them ownership of the public land within Holy Ghost Hill Subdivision. The law itself, Section 2 of R.A. No. 6099, provides that the occupants must first apply for a sales patent in order to avail of the benefits of the law, thus: "SEC. 2. Except those contrary to the provisions of Republic Act Numbered Seven Hundred and Thirty, all other provisions of Commonwealth Act Numbered One hundred and Forty-One governing the procedure of issuing titles shall apply in the disposition of the parcels above-described to the beneficiaries of this Act." The complaint filed by petitioners did not state that they had filed an application for a sales patent over Lot No. 47. Even if it did, an application for a sales patent could only create, at most, an inchoate right.

APPEARANCES OF COUNSEL

Gacayan Paredes Agmata & Associates Law Offices for petitioners.

The Solicitor General for public respondents.

Domogan Orate Dao-ayan and Associates Law Offices for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 17 February 2005 Decision[2] and the 6 September 2005 Resolution[3] of the Court of Appeals

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 98-104. Penned by Associate Justice Edgardo P. Cruz, with Presiding Justice Romeo A. Brawner and Associate Justice Jose C. Mendoza, concurring.

[3] *Id.* at 106.

(appellate court) in CA-G.R. CV No. 66685. In its 17 February 2005 Decision, the appellate court affirmed the 3 November 1999 Resolution[4] of Branch 61 of the Regional Trial Court of Baguio City (trial court), which dismissed the complaint filed by Vicente Cawis, Pedro Baclangen, Feliza Domilies, Ivan Mandiit, Domingo Cawis, and Gerard Libatique (collectively petitioners). In its 6 September 2005 Resolution, the appellate court denied petitioners' motion for reconsideration.

The Facts

On 23 September 1957, the Department of Environment and Natural Resources (DENR), pursuant to Section 79[5] of the Public Land Act,[6] approved the sales patent application of Jose V. Andrada (Andrada) for Lot No. 47 with an area of 1,339 square meters situated within Holy Ghost Hill Subdivision in Baguio City. Sales Patent No. 1319 was issued to Andrada upon full payment of the purchase price of the lot on 20 November 1968, as evidenced by O.R. No. 459651.[7]

On 4 August 1969, Republic Act No. 6099[8] took effect. It provided that subject to certain conditions, parcels of land within

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[4] Records, pp. 118-121.

[5] SEC. 79. All lots, except those claimed by or belonging to private parties and those reserved for parks, buildings, and other public uses, shall be sold, after due notice, at public auction to the highest bidder, after the approval and recording of the plat of subdivision as above provided, but no bid shall be accepted that does not equal at least two-thirds of the appraised value, nor shall bids be accepted from persons, corporations, associations, or partnerships not authorized to purchase public lands for commercial, residential, or industrial purposes under the provisions of this Act. The provisions of Sections twenty-six and sixty-five of this Act shall be observed in so far as they are applicable. Lots for which satisfactory bids have not been received shall be again offered for sale, under the same conditions as the first time, and if they then remain unsold, the Director of Lands shall be authorized to sell them at private sale for not less than two-thirds of their appraised value.

[6] Commonwealth Act No. 141, as amended.

[7] Records, p. 31.

[8] An Act Authorizing the Sale of Fourteen Parcels of Land in the Baguio Townsite, City of Baguio.

the Holy Ghost Hill Subdivision, which included Lot No. 47, would be sold to the actual occupants without the necessity of a public bidding, in accordance with the provisions of Republic Act No. 730.[9]

Claiming to be the actual occupants referred to in R.A. No. 6099, petitioners protested the sales patent awarded to Andrada. The Bureau of Lands denied their protest on the ground that R.A. No. 6099, being of later passage, could no longer affect the earlier award of sales patent to Andrada. Petitioners sought reconsideration, but the Bureau of Lands denied it on 19 May 1987. Petitioners failed to appeal the adverse decision of the Bureau of Lands to any higher administrative authority or to the courts. Thus, the decision had attained finality.[10]

Sometime in 1987, private respondent Ma. Edeliza S. Peralta (Peralta) purchased Lot No. 47 from Andrada. On 28 October 1987, the Deputy Public Land Inspector, in his final report of investigation,[11] found that neither Andrada nor Peralta had constructed a residential house on the lot, which was required in the Order of Award and set as a condition precedent for the issuance of the sales patent. Apparently, it was Vicente Cawis, one of the petitioners, who had built a house on Lot No. 47.

On 13 November 1987, Sales Patent No. 1319 was nonetheless transferred to Peralta. In the Order for the Issuance of Patent,[12] the Assistant Director of Lands verified the investigation conducted by the Land Inspector, whose report was fully endorsed by the District Land Officer, that Peralta had complied with the requirements of the law regarding the construction of improvements on the land applied for. In the Order for Transfer of Sales Rights,[13] the Director of Lands confirmed that before the transfer

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[9] An Act to Permit the Sale Without Public Auction of Public Lands of the Republic of the Philippines for Residential Purposes to Qualified Applicants under Certain Conditions.

[10] Records, p. 35.

[11] *Id.* at 113-114.

[12] *Rollo*, p. 132.

[13] *Id.* at 133.

of the sales patent to Peralta, Andrada had complied with the construction requirement. On 4 December 1987, Original Certificate of Title (OCT) No. P-1604[14] was duly issued in Peralta's name.

On 8 September 1998, petitioners filed a complaint[15] before the trial court alleging fraud, deceit, and misrepresentation in the issuance of the sales patent and the original certificate of title over Lot No. 47. They claimed they had interest in the lot as qualified beneficiaries of R.A. No. 6099 who met the conditions prescribed in R.A. No. 730. They argued that upon the enactment of R.A. No. 6099, Andrada's sales patent was deemed cancelled and revoked in their favor.

In her answer with a motion to dismiss,[16] Peralta averred that petitioners have no cause of action against her, that she obtained her title after compliance with the legal requirements, that her title was issued more than ten years prior to the filing of the complaint, that the action was a collateral attack on a title, and that even if the action was a direct attack, petitioners were not the proper parties.

The Ruling of the Trial Court

The trial court issued a Resolution dated 3 November 1999 dismissing the complaint filed by petitioners. The trial court held that reversion of title on the ground of fraud must be initiated by the government through the Office of the Solicitor General (OSG). In its 13 January 2000 Order,[17] the trial court denied petitioners' motion for reconsideration.

The Ruling of the Appellate Court

In its 17 February 2005 Decision, the appellate court affirmed the resolution of the trial court. The appellate court explained

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[14] *Id.* at 134.

[15] Records, pp. 2-9.

[16] *Id.* at 24-29.

[17] *Id.* at 134.

that under Section 2[18] of R.A. No. 6099, ownership of public land within the Holy Ghost Hill Subdivision was not automatically conferred on petitioners as occupants. The appellate court stated that petitioners must first apply for a sales patent in order to avail of the benefits of the law. The appellate court agreed with the trial court that petitioners had no standing to file a suit for annulment of Sales Patent No. 1319 and OCT No. P-1604. It cited Section 101[19] of the Public Land Act, which provides that only the government, through the OSG, could file an action for reversion. In its 6 September 2005 Resolution, the appellate court denied petitioners' motion for reconsideration.

The Issues

The twin issues raised by petitioners are (1) whether the actual occupants of parcels of land covered by R.A. No. 6099, which includes Lot No. 47, have standing to question the validity of the sales patent and the original certificate of title issued over Lot No. 47; and (2) whether the suit for annulment of title allegedly issued through fraud, deceit, or misrepresentation, has prescribed.

The Court's Ruling

The petition has no merit.

Petitioners contend private respondent misrepresented that there was no improvement on Lot No. 47 at the time she filed her sales patent application when in fact, there were numerous improvements consisting of residential houses erected by them. Petitioners argue neither private respondent nor her predecessor-

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[18] SEC. 2. Except those contrary to the provisions of Republic Act Numbered Seven Hundred and Thirty, all other provisions of Commonwealth Act Numbered One Hundred and Forty-One governing the procedure of issuing titles shall apply in the disposition of the parcels above-described to the beneficiaries of this Act.

[19] SEC. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines.

in-interest has introduced any improvement on Lot No. 47, which is a condition precedent before she can be a qualified awardee. Petitioners take exception to the rule that only the OSG is allowed to file a suit questioning the validity of the sales patent and the original certificate of title. As to the second issue, petitioners argue that since the sales patent and the original certificate of title are void from the beginning, the complaint filed by petitioners cannot be deemed to have prescribed.

In her Comment, private respondent asserts that petitioners have no personality to question the validity of the sales patent and the original certificate of title issued in her name. She maintains that only the government, through the OSG, may file an action for reversion on the ground of fraud, deceit, or misrepresentation. As to the second issue, private respondent claims that petitioners' annulment suit has prescribed pursuant to Section 32[20] of Presidential Decree No. 1529.[21]

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[20] SEC. 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

[21] Amending and Codifying the Laws Relative to Registration of Property and for other Purposes.

At the outset, we must point out that petitioners' complaint questioning the validity of the sales patent and the original certificate of title over Lot No. 47 is, in reality, a reversion suit. The objective of an action for reversion of public land is the cancellation of the certificate of title and the resulting reversion of the land covered by the title to the State. This is why an action for reversion is oftentimes designated as an annulment suit or a cancellation suit.

Coming now to the first issue, Section 101 of the Public Land Act[22] clearly states:

> SEC. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines.

Even assuming that private respondent indeed acquired title to Lot No. 47 in bad faith, only the State can institute reversion proceedings, pursuant to Section 101 of the Public Land Act and our ruling in *Alvarico v. Sola*.[23] Private persons may not bring an action for reversion or any action which would have the effect of canceling a land patent and the corresponding certificate of title issued on the basis of the patent, such that the land covered thereby will again form part of the public domain.[24] Only the OSG or the officer acting in his stead may do so. Since the title originated from a grant by the government, its cancellation is a matter between the grantor and the grantee.[25]

Similarly, in *Urquiaga v. CA*,[26] this Court held that there is no need to pass upon any allegation of actual fraud in the acquisition of a title based on a sales patent. Private persons have no right or interest over land considered public at the time

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[22] Commonwealth Act No. 141, as amended.

[23] 432 Phil. 792 (2002).

[24] *Id.*

[25] *Id.*

[26] 361 Phil. 660 (1999).

the sales application was filed. They have no personality to question the validity of the title. We further stated that granting, for the sake of argument, that fraud was committed in obtaining the title, it is the State, in a reversion case, which is the proper party to file the necessary action.[27]

In this case, it is clear that Lot No. 47 was public land when Andrada filed the sales patent application. Any subsequent action questioning the validity of the award of sales patent on the ground of fraud, deceit, or misrepresentation should thus be initiated by the State. The State has not done so and thus, we have to uphold the validity and regularity of the sales patent as well as the corresponding original certificate of title issued based on the patent.

At any rate, the Court, in the exercise of its equity jurisdiction, may directly resolve the issue of alleged fraud in the acquisition of a sales patent although the action is instituted by a private person. In this connection, the 19 May 1987 letter of the Director of Lands to petitioner Vicente Cawis is instructive:

> As to your allegation that the award in favor of applicant-respondent (Andrada) should be cancelled as he failed to introduce improvements on the land, we find the said contention to be untenable. Somewhere in your letter dated July 11, 1983, you stated that you took possession of the lot in question in the early 1950's, introduced improvements thereon, and resided therein continuously up to the present. By your own admission, it would appear that you were the ones who made it impossible for Mr. Andrada to take possession of the said lot and to improve the same. This being the case, the failure of the applicant-respondent (Andrada) to introduce improvements on the land in question is not attributable to him.
>
> In view of the foregoing facts and circumstances, we regret to inform you that we cannot reconsider our position on this matter. It is further advised that you vacate the premises and remove all your improvements thereon so that the applicant-awardee (Andrada) can take immediate possession of the land in question.[28]

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[27] *Id*.

[28] Records, pp. 31-32.

Clearly then, fraud cannot be imputed to Andrada. His supposed failure to introduce improvements on Lot No. 47 is simply due to petitioners' refusal to vacate the lot. It appears from the factual finding of the Director of Lands that petitioners are the ones in bad faith. Contrary to petitioners' claim, R.A. No. 6099 did not automatically confer on them ownership of the public land within Holy Ghost Hill Subdivision. The law itself, Section 2 of R.A. No. 6099, provides that the occupants must first apply for a sales patent in order to avail of the benefits of the law, thus:

> SEC. 2. Except those contrary to the provisions of Republic Act Numbered Seven Hundred and Thirty, all other provisions of Commonwealth Act Numbered One hundred and Forty-One governing the procedure of issuing titles shall apply in the disposition of the parcels above-described to the beneficiaries of this Act.

The complaint filed by petitioners did not state that they had filed an application for a sales patent over Lot No. 47. Even if it did, an application for a sales patent could only create, at most, an inchoate right. Not being the real parties-in-interest, petitioners have no personality to file the reversion suit in this case.

Consequently, the prescription issue pertaining to the action for reversion initiated by petitioners who could not have successfully initiated the reversion suit in the first place, is now moot.

WHEREFORE, we *DENY* the petition for review. We *AFFIRM* the 17 February 2005 Decision and the 6 September 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 66685.

Costs against petitioners.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170241. April 19, 2010]

PHILIPPINE SAVINGS BANK, *petitioner, vs.* **SPOUSES DIONISIO GERONIMO and CARIDAD GERONIMO,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; ACT NO. 3135 (THE REAL ESTATE MORTGAGE LAW); EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; REQUISITE PUBLICATION OF NOTICE OF SALE; THE PARTY ALLEGING NON-COMPLIANCE THEREWITH HAS THE BURDEN OF PROVING THE SAME; NEGATIVE ALLEGATIONS, WHEN NOT PROVED; CASE AT BAR. — It is settled that for the purpose of extrajudicial foreclosure of mortgage, the party alleging non-compliance with the requisite publication has the burden of proving the same. In this case, respondents presented the testimony of a newsstand owner to prove that *Ang Pinoy* is not a newspaper of general circulation. However, this particular evidence is unreliable, as the same witness testified that he sells newspapers in Quezon City, not in Caloocan City, and that he is unaware of *Ang Pinoy* newspaper simply because he is not selling the same and he had not heard of it. x x x Notwithstanding, petitioner could have easily produced the affidavit of publication and other competent evidence (such as the published notices) to refute respondents' claim of lack of publication of the notice of sale. In *Spouses Pulido v. Court of Appeals*, the Court held: "While it may be true that the party alleging non-compliance with the requisite publication has the burden of proof, still negative allegations need not be proved even if essential to one's cause of action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party."

2. ID.; ID.; ID.; ID.; AFFIDAVIT OF PUBLICATION; EVIDENTIARY WEIGHT. — In relation to the evidentiary weight of the affidavit of publication, the Court ruled in *China Banking Corporation v. Spouses Martir* that the affidavit of publication executed by the account executive of the newspaper is *prima facie* proof that the newspaper is generally circulated in the place where the properties are located.

3. ID.; ID.; ID.; ID.; PUBLICATION MUST BE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE CITY WHERE THE PROPERTY IS SITUATED. — [T]he Court notes that *Ang Pinoy* is a newspaper of general circulation printed and published in Manila, not in Caloocan City where the mortgaged property is located, as indicated in the excluded Affidavit of Publication. This is contrary to the requirement under Section 3 of Act No. 3135 pertaining to the publication of the notice of sale in a newspaper of general circulation in the city where the property is situated. Hence, even if the Affidavit of Publication was admitted as part of petitioner's evidence, it would not support petitioner's case as it does not clearly prove petitioner's compliance with the publication requirement.

4. ID.; ID.; ID.; ID.; ACTUAL PUBLICATION OF NOTICE OF SALE, NOT PART OF SHERIFF'S OFFICIAL FUNCTIONS. — Petitioner's invocation of the presumption of regularity in the performance of official duty on the part of Sheriff Castillo is misplaced. While posting the notice of sale is part of a sheriff's official functions, the actual publication of the notice of sale cannot be considered as such, since this concerns the publisher's business. Simply put, the sheriff is incompetent to prove that the notice of sale was actually published in a newspaper of general circulation.

5. ID.; ID.; ID.; ID.; IMPORTANCE. — [T]he Court stresses the importance of the notice requirement, as enunciated in *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*, thus: "The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice [sale] of the property. The goal of the notice requirement is to achieve a 'reasonably wide publicity' of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the 'far-reaching effects' of publishing the notice of sale in a newspaper of general circulation."

6. ID.; ID.; ID.; STATUTORY REQUIREMENTS OF FORECLOSURE; MUST BE COMPLIED WITH FAITHFULLY BY MORTGAGEES. — [T]he Court reminds mortgagees of their duty to comply faithfully with the statutory requirements of foreclosure. In *Metropolitan Bank v. Wong*,

the Court declared: "While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others."

APPEARANCES OF COUNSEL

Corpuz Ejercito Macasaet and Rivera Law Offices for petitioner.
E.B. Espejo Law Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 30 August 2005 Decision[2] and 3 November 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 66672. The Court of Appeals reversed the decision of Branch 121 of the Regional Trial Court of Caloocan City, National Capital Region (trial court) by declaring void the questioned extrajudicial foreclosure of real estate mortgage for non-compliance with the statutory requirement of publication of the notice of sale.

The Facts

On 9 February 1995, respondents Spouses Dionisio and Caridad Geronimo (respondents) obtained a loan from petitioner Philippine Savings Bank (petitioner) in the amount of ₱3,082,000, secured

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 7-16. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring.

[3] *Id.* at 18.

by a mortgage on respondents' land situated in Barrio Talipapa, Caloocan City and covered by Transfer Certificate of Title No. C-50575.[4] Respondents defaulted on their loan, prompting petitioner to initiate the extra-judicial foreclosure of the real estate mortgage. At the auction sale conducted on 29 March 1996, the mortgaged property was sold to petitioner,[5] being the highest bidder, for ₱3,000,000. Consequently, a Certificate of Sale was issued in favor of petitioner.[6]

Claiming that the extrajudicial foreclosure was void for non-compliance with the law, particularly the publication requirement, respondents filed with the trial court a complaint for the annulment of the extrajudicial foreclosure.[7]

The trial court sustained the validity of the extrajudicial foreclosure, and disposed of the case as follows:

> WHEREFORE, premises considered, the instant Complaint for Annulment of Foreclosure of Mortgage and Damages is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[8]

On appeal, the Court of Appeals held:

> WHEREFORE, the assailed decision dated 26 November 1999 of the Regional Trial Court of Caloocan City is REVERSED and SET ASIDE. The Extrajudicial Foreclosure of Mortgage conducted on 29 March 1996 is declared NULL and VOID.
>
> SO ORDERED.[9]

The Court of Appeals denied petitioner's motion for reconsideration.

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[4] Records, pp. 200-201.

[5] *Id.* at 201.

[6] *Id.*

[7] Docketed as Civil Case No. C-18014.

[8] Records, p. 348. Penned by Judge Adoracion G. Angeles.

[9] *Rollo*, p. 15.

Hence, this petition.

The Ruling of the Trial Court

The trial court held that "personal notice on the mortgagor is not required under Act No. 3135." All that is required is "the posting of the notices of sale for not less than 20 days in at least three public places in the municipality or city where the property is situated, and publication once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city, if the property is worth more than four hundred pesos."

The trial court further ruled there was compliance with the statutory publication requirement. Since the affidavit of publication was excluded as petitioner's evidence, the trial court relied instead on the positive testimony of Deputy Sheriff Alberto Castillo, that he caused the publication of the Notice of Sale, in holding there was publication of the notice of sale in a newspaper of general circulation. In relation to this, the trial court cited the presumption of regularity in the performance of official duty. The trial court found that respondents, as plaintiffs, failed to discharge their burden of proving petitioner's alleged non-compliance with the requisite publication. The trial court stated that the testimony of respondents' witness, a newsstand owner, "that he has never sold *Ang Pinoy* newspaper can never lead to the conclusion that such publication does not exist."

The Ruling of the Court of Appeals

The Court of Appeals reversed the ruling of the trial court.

The Court of Appeals found no sufficient evidence to prove that *Ang Pinoy* is a newspaper of general circulation in Caloocan City. In a Resolution dated 2 February 2005, the Court of Appeals required the then Executive Judge of the Regional Trial Court of Caloocan City to inform the appellate court of the following facts:

1. If Ang Pinoy newspaper is a newspaper of general circulation particularly for the years 1995 and 1996; and

2. If there was compliance with Sec. 2 of P.D. No. 1079 which provides:

> "The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him for publication to qualified newspapers or periodicals x x x, which distribution shall be done by raffle."[10]

Executive Judge Victoria Isabel A. Paredes (Executive Judge Paredes) complied with the directive by stating that:

a) Ang Pinoy newspaper is not an accredited periodical in Caloocan City. Hence, we are unable to categorically state whether it is a newspaper of general circulation at present or for the years 1995 and 1996 (Certification marked as Annex "A")
b) Sec. 2, P.D. No. 1079 is being observed and complied with in that the raffle of judicial notices for publication, is a permanent agenda item in the regular raffle with the RTC, Caloocan City, holds every Monday at 2 o'clock in the afternoon at the courtroom of RTC, Branch 124 (Certification marked as Annex "B"); and
c) We have no knowledge on whether Ang Pinoy was included in the raffles conducted in 1995 and 1996, as we do not have the case record where the information may be verified.[11]

The Court of Appeals concluded that, based on the compliance of Executive Judge Paredes, *Ang Pinoy* is not a newspaper of general circulation in Caloocan City. Therefore, the extrajudicial foreclosure is void for non-compliance with the requirement of the publication of the notice of sale in a newspaper of general circulation.

The Issue

Basically, the issue in this case is whether the extra-judicial foreclosure is void for non-compliance with the publication requirement under Act No. 3135.

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[10] CA *rollo*, p. 86.

[11] *Id.* at 102.

The Ruling of the Court

The petition lacks merit.

Section 3 of Act No. 3135[12] reads:

SECTION 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, **such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city**. (Emphasis supplied)

Petitioner claims that it complied with the above provision in foreclosing extrajudicially the subject real estate mortgage. To buttress its claim, petitioner presented the testimony of Deputy Sheriff Alberto Castillo of the trial court, the pertinent portion of which states:

ATTY. DAVIS:

> Do you remember having come across a certain property owned by spouses Geronimo covered by TCT No. 50576 of the Register of Deeds of Caloocan City?

x x x x x x x x x

A. Yes, sir.

ATTY. DAVIS:

Q. In what connection?

A. In connection with the extra judicial foreclosure filed by the PS Bank, sir.

x x x x x x x x x

Q. When this was assigned to you what action did you take thereon?

A. I prepared the notice of sale having published in the newspaper which the executive judge awarded it. Sent notice to the

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[12] ACT NO. 3135 — AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

said parties and posted it to the three conspicuous places of Caloocan City, sir.

Q. You mentioned about your issuance of Notice of Sale I am referring you now to the document previously marked as Exhibit "6". What relation is this if any to the one you have mentioned?

A. This is the Notice of Sale I have prepared, sir.

Q. Now you also mentioned that you have caused the publication of this Notice of Sheriff's Sale to a newspaper of general circulation, do you remember what newspaper it was?

A. Ang Pinoy, sir.

Q. How come that this newspaper was selected for purposes of publication?

A. It was the executive judge who awarded that publication, sir.

Q. How do you know particularly that this notice was published in the newspaper?

A. That during the auction sale the mortgagee bank presented affidavit of publication, sir.[13]

On the other hand, respondents dispute the existence of the publication of the notice of sale. Assuming that the notice of sale was published, respondents contend that *Ang Pinoy*, where it was published, is not a newspaper of general circulation. To bolster their claim of non-publication, respondents offered the testimony of Danilo Magistrado, a newsstand owner, which pertinently states:

ATTY. SAYA:

Do you know by chance the Pinoy Newspaper?

ATTY. DAVIS:

No basis.

COURT:

Objection overruled. Witness may answer.

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[13] TSN, 3 June 1999, pp. 3-5.

A. None, sir. I do not sell Pinoy Newspaper, sir.

ATTY. SAYA:
Why do you say that you do not know Pinoy Newspaper?
A. From the time I sold newspapers, sir, I have not seen Pinoy Newspaper.

ATTY. SAYA:
That would be all, your Honor.

Before resolving the principal issue, we must point out the requirement of accreditation was imposed by the Court only in 2001, through A.M. No. 01-1-07-SC or the *Guidelines in the Accreditation of Newspapers and Periodicals Seeking to Publish Judicial and Legal Notices and Other Similar Announcements and in the Raffle Thereof*.[14] The present case involves an extrajudicial foreclosure conducted in 1996; thus, there were no such guidelines in effect during the questioned foreclosure. At any rate, the accreditation by the Executive Judge is not decisive of whether a newspaper is of general circulation.[15]

It is settled that for the purpose of extrajudicial foreclosure of mortgage, the party alleging non-compliance with the requisite publication has the burden of proving the same.[16] In this case, respondents presented the testimony of a newsstand owner to prove that *Ang Pinoy* is not a newspaper of general circulation. However, this particular evidence is unreliable, as the same witness testified that he sells newspapers in Quezon City, not in Caloocan City, and that he is unaware of *Ang Pinoy* newspaper simply because he is not selling the same and he had not heard of it. His testimony states:

Q. Where is this place that you traditionally or usually sell newspaper?
A. Corner of A. Bonifacio and 6th Avenue.

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[14] *China Banking Corporation v. Martir*, G.R. No. 184252, 11 September 2009, 599 SCRA 672, 682.

[15] *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*, G.R. No. 173976, 27 February 2009, 580 SCRA 352, 357.

[16] *Id.*

Q. This is in Quezon City?
A. Yes, sir.

Q. Not in Caloocan?
A. In Quezon City, sir.

x x x x x x x x x

COURT: Clarificatory question.
Q. You said that there is no Pinoy magazine simply because you are not selling Pinoy magazine?
A. Yes, your Honor.

Q. But you are not certain that there is really no Pinoy magazine?

COURT:
But have you heard about Pinoy magazine or Pinoy newspaper?
A. I have not heard, your Honor.[17]

Notwithstanding, petitioner could have easily produced the affidavit of publication and other competent evidence (such as the published notices) to refute respondents' claim of lack of publication of the notice of sale. In *Spouses Pulido v. Court of Appeals*,[18] the Court held:

> While it may be true that the party alleging non-compliance with the requisite publication has the burden of proof, still negative allegations need not be proved even if essential to one's cause of action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party.

In relation to the evidentiary weight of the affidavit of publication, the Court ruled in *China Banking Corporation v. Spouses Martir*[19] that the affidavit of publication executed by the account executive of the newspaper is *prima facie* proof that the newspaper is generally circulated in the place where the properties are located.[20]

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[17] TSN, 4 November 1998, pp. 5-6, 9-10.

[18] 321 Phil. 1064, 1069 (1995).

[19] *Supra* note 12 at 683.

[20] See also *Spouses Marcelo v. Philippine Commercial International Bank (PCIB)*, G.R. No. 182735, 4 December 2009; *Baluyut v. Poblete*, G.R.

In the present case, the Affidavit of Publication or Exhibit "8", although formally offered by petitioner, was excluded by the trial court for being hearsay.[21] Petitioner never challenged the exclusion of the affidavit of publication. Instead, petitioner relies solely on the testimony of Deputy Sheriff Alberto Castillo to prove compliance with the publication requirement under Section 3 of Act No. 3135. However, there is nothing in such testimony to clearly and convincingly prove that petitioner complied with the mandatory requirement of publication. When Sheriff Castillo was asked how he knew that the notice of sale was published, he simply replied that "during the auction sale the mortgagee bank presented the affidavit of publication."[22] Evidently, such an answer does not suffice to establish petitioner's claim of compliance with the statutory requirement of publication. On the contrary, Sheriff Castillo's testimony reveals that he had no personal knowledge of the actual publication of the notice of sale, much less the extent of the circulation of *Ang Pinoy*.

Moreover, the Court notes that *Ang Pinoy* is a newspaper of general circulation printed and published in Manila, not in Caloocan City where the mortgaged property is located, as indicated in the excluded Affidavit of Publication. This is contrary to the requirement under Section 3 of Act No. 3135 pertaining to the publication of the notice of sale in a newspaper of general circulation in the city where the property is situated. Hence, even if the Affidavit of Publication was admitted as part of petitioner's evidence, it would not support petitioner's case as

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No. 144435, 6 February 2007, 514 SCRA 370, 382-383; *Fortune Motors (Phils.), Inc. v. Metropolitan Bank and Trust Company*, 332 Phil. 844, 849 (1996), citing *Bonnevie v. Court of Appeals*, 210 Phil. 100, 111 (1983).

[21] Records, pp. 275 and 303. In its 5 October 1999 Order, the trial court ruled that:

> Anent the Affidavit of Publication conditionally marked as Exhibit "8", the Court sees no reason to reconsider the exclusion of the document as exhibit on the ground that the affiant was not presented to affirm the contents of her affidavit, hence, the document remains to be plain hearsay.

[22] TSN, 3 June 1999, p. 5.

it does not clearly prove petitioner's compliance with the publication requirement.

Petitioner's invocation of the presumption of regularity in the performance of official duty on the part of Sheriff Castillo is misplaced. While posting the notice of sale is part of a sheriff's official functions,[23] the actual publication of the notice of sale cannot be considered as such, since this concerns the publisher's business. Simply put, the sheriff is incompetent to prove that the notice of sale was actually published in a newspaper of general circulation.

The Court further notes that the Notice of Extra-Judicial Sale,[24] prepared and posted by Sheriff Castillo, does not indicate the newspaper where such notice would be published. The space provided where the name of the newspaper should be was left blank, with only the dates of publication clearly written. This omission raises serious doubts as to whether there was indeed publication of the notice of sale.

Once again, the Court stresses the importance of the notice requirement, as enunciated in *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*,[25] thus:

> The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice [sale] of the property. The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation.

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[23] *Bohanan v. Court of Appeals*, 326 Phil. 375, 381 (1996), where the Court ruled that the testimony of the sheriff suffices in lieu of the customary certificate of posting and can properly be accorded the presumption of regularity of performance.

[24] Exhibits "6" and "6-A".

[25] *Supra* note 15.

In addition, the Court reminds mortgagees of their duty to comply faithfully with the statutory requirements of foreclosure. In *Metropolitan Bank v. Wong*,[26] the Court declared:

> While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.

In sum, petitioner failed to establish its compliance with the publication requirement under Section 3 of Act No. 3135. Consequently, the questioned extrajudicial foreclosure of real estate mortgage and sale are void.[27]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 30 August 2005 Decision and 3 November 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 66672.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.*, concur.

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[26] 412 Phil. 207, 220 (2001).

[27] *Philippine National Bank v. Maraya,* G.R. No. 164104, 11 September 2009, 599 SCRA 394, 400; *Development Bank of the Philippines v. Court of Appeals*, 451 Phil. 563, 579; *Metropolitan Bank and Trust Company, Inc. v. Penafiel, supra* note 15.

SECOND DIVISION

[G.R. No. 170483. April 19, 2010]

MANUEL C. BUNGCAYAO, SR., represented in this case by his Attorney-in-fact ROMEL R. BUNGCAYAO, *petitioner, vs.* **FORT ILOCANDIA PROPERTY HOLDINGS AND DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; KINDS OF PLEADINGS; COUNTERCLAIM; COMPULSORY COUNTERCLAIM, DEFINED. — A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive.

2. ID.; ID.; ID.; ID.; CRITERIA TO DETERMINE WHETHER THE COUNTERCLAIM IS COMPULSORY OR PERMISSIVE. — The Court has ruled that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties. The criteria to determine whether the counterclaim is compulsory or permissive are as follows: (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendant's claim, absent the compulsory rule? (c) Will substantially the same evidence

support or refute plaintiff's claim as well as defendant's counterclaim? (d) Is there any logical relations between the claim and the counterclaim? A positive answer to all four questions would indicate that the counterclaim is compulsory.

3. ID.; ID.; ID.; ID.; PERMISSIVE COUNTERCLAIM; FOR THE TRIAL COURT TO ACQUIRE JURISDICTION, THE COUNTERCLAIMANT IS BOUND TO PAY THE PRESCRIBED DOCKET FEES. — The rule in permissive counterclaim is that for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees. Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. In this case, respondent did not dispute the non-payment of docket fees. Respondent only insisted that its claims were all compulsory counterclaims. As such, the judgment by the trial court in relation to the second counterclaim is considered null and void without prejudice to a separate action which respondent may file against petitioner.

4. ID.; ID.; SUMMARY JUDGMENT; REQUISITES; GENUINE ISSUE, DEFINED. — Summary judgment has been explained as follows: "Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A 'genuine issue' is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Section 3 of the said rule provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine."

APPEARANCES OF COUNSEL

Romeo K. Dolleton for petitioner.
Ponce Enrile Reyes and Manalastas for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 21 November 2005 Decision[2] of the Court of Appeals in CA-G.R. CV No. 82415.

The Antecedent Facts

Manuel C. Bungcayao, Sr. (petitioner) claimed to be one of the two entrepreneurs who introduced improvements on the foreshore area of Calayab Beach in 1978 when Fort Ilocandia Hotel started its construction in the area. Thereafter, other entrepreneurs began setting up their own stalls in the foreshore area. They later formed themselves into the D'Sierto Beach Resort Owner's Association, Inc. (D'Sierto).

In July 1980, six parcels of land in Barrio Balacad (now Calayad) were transferred, ceded, and conveyed to the Philippine Tourism Authority (PTA) pursuant to Presidential Decree No. 1704. Fort Ilocandia Resort Hotel was erected on the area. In 1992, petitioner and other D'Sierto members applied for a foreshore lease with the Community Environment and Natural Resources Office (CENRO) and was granted a provisional permit. On 31 January 2002, Fort Ilocandia Property Holdings and Development Corporation (respondent) filed a foreshore application over a 14-hectare area abutting the Fort Ilocandia

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 36-42. Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta, concurring.

Property, including the 5-hectare portion applied for by D'Sierto members. The foreshore applications became the subject matter of a conflict case, docketed Department of Environment and Natural Resources (DENR) Case No. 5473, between respondent and D'Sierto members. In an undated Order,[3] DENR Regional Executive Director Victor J. Ancheta denied the foreshore lease applications of the D'Sierto members, including petitioner, on the ground that the subject area applied for fell either within the titled property or within the foreshore areas applied for by respondent. The D'Sierto members appealed the denial of their applications. In a Resolution[4] dated 21 August 2003, then DENR Secretary Elisea G. Gozun denied the appeal on the ground that the area applied for encroached on the titled property of respondent based on the final verification plan.

In a letter dated 18 September 2003,[5] respondent, through its Public Relations Manager Arlene de Guzman, invited the D'Sierto members to a luncheon meeting to discuss common details beneficial to all parties concerned. Atty. Liza Marcos (Atty. Marcos), wife of Governor Bongbong Marcos, was present as she was asked by Fort Ilocandia hotel officials to mediate over the conflict among the parties. Atty. Marcos offered ₱300,000 as financial settlement per claimant in consideration of the improvements introduced, on the condition that they would vacate the area identified as respondent's property. A D'Sierto member made a counter-offer of ₱400,000, to which the other D'Sierto members agreed.

Petitioner alleged that his son, Manuel Bungcayao, Jr., who attended the meeting, manifested that he still had to consult his parents about the offer but upon the undue pressure exerted by Atty. Marcos, he accepted the payment and signed the Deed of Assignment, Release, Waiver and Quitclaim[6] in favor of respondent.

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[3] Records, vol. 1, pp. at 85-93.

[4] *Id.* at 95-101.

[5] *Id.* at 20.

[6] *Id.* at 21-25.

Petitioner then filed an action for declaration of nullity of contract before the Regional Trial Court of Laoag, City, Branch 13 (trial court), docketed as Civil Case Nos. 12891-13, against respondent. Petitioner alleged that his son had no authority to represent him and that the deed was void and not binding upon him.

Respondent countered that the area upon which petitioner and the other D'Sierto members constructed their improvements was part of its titled property under Transfer Certificate of Title No. T-31182. Respondent alleged that petitioner's sons, Manuel, Jr. and Romel, attended the luncheon meeting on their own volition and they were able to talk to their parents through a cellular phone before they accepted respondent's offer. As a counterclaim, respondent prayed that petitioner be required to return the amount of ₱400,000 from respondent, to vacate the portion of the respondent's property he was occupying, and to pay damages because his continued refusal to vacate the property caused tremendous delay in the planned implementation of Fort Ilocandia's expansion projects.

In an Order[7] dated 6 November 2003, the trial court confirmed the agreement of the parties to cancel the Deed of Assignment, Release, Waiver and Quitclaim and the return of ₱400,000 to respondent. Petitioner's counsel, however, manifested that petitioner was still maintaining its claim for damages against respondent.

Petitioner and respondent agreed to consider the case submitted for resolution on summary judgment. Thus, in its Order[8] dated 28 November 2003, the trial court considered the case submitted for resolution. Petitioner filed a motion for reconsideration, alleging that he manifested in open court that he was withdrawing his earlier manifestation submitting the case for resolution. Respondent filed a Motion for Summary Judgment.

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[7] *Id.* at 110-111.

[8] *Id.* at 128-129.

The trial court rendered a Summary Judgment[9] dated 13 February 2004.

The Decision of the Trial Court

The trial court ruled that the only issue raised by petitioner was his claim for damages while respondent's issue was only his claim for possession of the property occupied by petitioner and damages. The trial court noted that the parties already stipulated on the issues and admissions had been made by both parties. The trial court ruled that summary judgment could be rendered on the case.

The trial court ruled that the alleged pressure on petitioner's sons could not constitute force, violence or intimidation that could vitiate consent. As regards respondent's counterclaim, the trial court ruled that based on the pleadings and admissions made, it was established that the property occupied by petitioner was within the titled property of respondent. The dispositive portion of the trial court's decision reads:

> WHEREFORE, the Court hereby renders judgment DISMISSING the claim of plaintiff for damages as it is found to be without legal basis, and finding the counterclaim of the defendant for recovery of possession of the lot occupied by the plaintiff to be meritorious as it is hereby GRANTED. Consequently, the plaintiff is hereby directed to immediately vacate the premises administratively adjudicated by the executive department of the government in favor of the defendant and yield its possession unto the defendant. No pronouncement is here made as yet of the damages claimed by the defendant.
>
> SO ORDERED.[10]

Petitioner appealed from the trial court's decision.

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[9] *Id.* at 220-229. Penned by Presiding Judge Philip G. Salvador.

[10] *Id.* at 229.

The Decision of the Court of Appeals

In its 21 November 2005 Decision, the Court of Appeals affirmed the trial court's decision *in toto*.

The Court of Appeals sustained the trial court in resorting to summary judgment as a valid procedural device for the prompt disposition of actions in which the pleadings raise only a legal issue and not a genuine issue as to any material fact. The Court of Appeals ruled that in this case, the facts are not in dispute and the only issue to be resolved is whether the subject property was within the titled property of respondent. Hence, summary judgment was properly rendered by the trial court.

The Court of Appeals ruled that the counterclaims raised by respondent were compulsory in nature, as they arose out of or were connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and did not require for its adjudication the presence of third parties of whom the court could not acquire jurisdiction. The Court of Appeals ruled that respondent was the rightful owner of the subject property and as such, it had the right to recover its possession from any other person to whom the owner has not transmitted the property, including petitioner.

The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, the assailed decision dated February 13, 2004 of the Regional Trial Court of Laoag City, Branch 13 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[11]

Thus, the petition before this Court.

The Issues

Petitioner raises the following issues in his Memorandum:[12]

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[11] *Rollo*, p. 42.

[12] *Id.* at 139.

1. Whether respondent's counterclaim is compulsory; and
2. Whether summary judgment is appropriate in this case.

The Ruling of this Court

The petition has merit.

Compulsory Counterclaim

A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint.[13] It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case.[14] Any other counterclaim is permissive.[15]

The Court has ruled that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim.[16] The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.[17]

The criteria to determine whether the counterclaim is compulsory or permissive are as follows:

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[13] *Cruz-Agana v. Hon. Santiago-Lagman*, 495 Phil. 188 (2005).

[14] *Id*.

[15] *Id*.

[16] *Lafarge Cement Phil., Inc. v. Continental Cement Corp.*, 486 Phil. 123 (2004) citing *Quintanilla v. CA*, 344 Phil. 811 (1997) and *Alday v. FGU Insurance Corporation*, 402 Phil. 962 (2001).

[17] *Id*.

(a) Are issues of fact and law raised by the claim and by the counterclaim largely the same?

(b) Would *res judicata* bar a subsequent suit on defendant's claim, absent the compulsory rule?

(c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?

(d) Is there any logical relations between the claim and the counterclaim?

A positive answer to all four questions would indicate that the counterclaim is compulsory.[18]

In this case, the only issue in the complaint is whether Manuel, Jr. is authorized to sign the Deed of Assignment, Release, Waiver and Quitclaim in favor of respondent without petitioner's express approval and authority. In an Order dated 6 November 2003, the trial court confirmed the agreement of the parties to cancel the Deed of Assignment, Release, Waiver and Quitclaim and the return of ₱400,000 to respondent. The only claim that remained was the claim for damages against respondent. The trial court resolved this issue by holding that any damage suffered by Manuel, Jr. was personal to him. The trial court ruled that petitioner could not have suffered any damage even if Manuel, Jr. entered into an agreement with respondent since the agreement was null and void.

Respondent filed three counterclaims. The first was for recovery of the ₱400,000 given to Manuel, Jr.; the second was for recovery of possession of the subject property; and the third was for damages. The first counterclaim was rendered moot with the issuance of the 6 November 2003 Order confirming the agreement of the parties to cancel the Deed of Assignment, Release, Waiver and Quitclaim and to return the ₱400,000 to respondent. Respondent waived and renounced the third counterclaim for damages.[19] The only counterclaim that remained

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[18] *Id.* citing *NAMARCO v. Federation of United Mamarco Distributors*, 151 Phil. 338 (1973).

[19] *Rollo*, p. 120.

was for the recovery of possession of the subject property. While this counterclaim was an offshoot of the same basic controversy between the parties, it is very clear that it will not be barred if not set up in the answer to the complaint in the same case. Respondent's second counterclaim, contrary to the findings of the trial court and the Court of Appeals, is only a permissive counterclaim. It is not a compulsory counterclaim. It is capable of proceeding independently of the main case.

The rule in permissive counterclaim is that for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees.[20] Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court.[21] In this case, respondent did not dispute the non-payment of docket fees. Respondent only insisted that its claims were all compulsory counterclaims. As such, the judgment by the trial court in relation to the second counterclaim is considered null and void[22] without prejudice to a separate action which respondent may file against petitioner.

Summary Judgment

Section 1, Rule 35 of the 1997 Rules of Civil Procedure provides:

> Section 1. *Summary Judgment for claimant.* — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Summary judgment has been explained as follows:

> Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings

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[20] *Sandejas v. Ignacio, Jr.*, G.R. No. 155033, 19 December 2007, 541 SCRA 61.

[21] *Id.*

[22] *Id.*

on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Section 3 of the said rule provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.[23]

Since we have limited the issues to the damages claimed by the parties, summary judgment has been properly rendered in this case.

WHEREFORE, we *MODIFY* the 21 November 2005 Decision of the Court of Appeals in CA-G.R. CV No. 82415 which affirmed the 13 February 2004 Decision of the Regional Trial Court of Laoag City, Branch 13, insofar as it ruled that respondent's counterclaim for recovery of possession of the subject property is compulsory in nature. We *DISMISS* respondent's permissive counterclaim without prejudice to filing a separate action against petitioner.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.,* concur.

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[23] *Nocom v. Camerino,* G.R. No. 182984, 10 February 2009, 578 SCRA 390, 409-410.

SECOND DIVISION

[G.R. No. 170912. April 19, 2010]

ROBERT DINO, *petitioner, vs.* **MARIA LUISA JUDAL-LOOT, joined by her husband VICENTE LOOT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED DURING THE TRIAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR. — [P]etitioner did not expressly state in his Answer or raise during the trial that Metrobank Check No. C-MA-142119406-CA is a crossed check. It must be stressed, however, that petitioner consistently argues that respondents are not holders in due course of the subject check, which is one of the possible effects of crossing a check. The act of crossing a check serves as a warning to the holder that the check has been issued for a definite purpose so that the holder thereof must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course. Contrary to respondents' view, petitioner never changed his theory, that respondents are not holders in due course of the subject check, as would violate fundamental rules of justice, fair play, and due process. Besides, the subject check was presented and admitted as evidence during the trial and respondents did not and in fact cannot deny that it is a crossed check.

2. ID.; ID.; ID.; THE COURT HAS AMPLE AUTHORITY TO ENTERTAIN ISSUES OR MATTERS NOT RAISED IN THE LOWER COURTS IN THE INTEREST OF SUBSTANTIAL JUSTICE. — [T]he Court is clothed with ample authority to entertain issues or matters not raised in the lower courts in the interest of substantial justice. In *Casa Filipina Realty v. Office of the President,* the Court held: "[T]he trend in modern-day procedure is to accord the courts broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution which the parties failed to raise or which the lower court ignored. Since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in

technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties."

3. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; RIGHTS OF THE HOLDER; HOLDER IN DUE COURSE, DEFINED. — Section 52 of the Negotiable Instruments Law defines a holder in due course, thus: "A holder in due course is a holder who has taken the instrument under the following conditions: (a) That it is complete and regular upon its face; (b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact; (c) That he took it in good faith and for value; (d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

4. ID.; ID.; BILLS OF EXCHANGE; CROSSED CHECKS; NATURE. — In the case of a crossed check, as in this case, the following principles must additionally be considered: A crossed check (a) may not be encashed but only deposited in the bank; (b) may be negotiated only once — to one who has an account with a bank; and (c) warns the holder that it has been issued for a definite purpose so that the holder thereof must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.

5. ID.; ID.; RIGHTS OF THE HOLDER; HOLDERS NOT IN DUE COURSE; A HOLDER IS NOT DEEMED A HOLDER IN DUE COURSE IF HE IS GUILTY OF GROSS NEGLIGENCE AMOUNTING TO LEGAL ABSENCE OF GOOD FAITH; CASE AT BAR. — [R]espondents had the duty to ascertain the indorser's, in this case Lobitana's, title to the check or the nature of her possession. This respondents failed to do. Respondents' verification from Metrobank on the funding of the check does not amount to determination of Lobitana's title to the check. Failing in this respect, respondents are guilty of gross negligence amounting to legal absence of good faith, contrary to Section 52(c) of the Negotiable Instruments Law. Hence, respondents are not deemed holders in due course of the subject check.

6. ID.; ID.; PRESENTMENT FOR PAYMENT; IMPROPER WHEN NOT MADE BY THE PAYEE OR A PARTY

AUTHORIZED TO MAKE THE PRESENTMENT; CASE AT BAR. — In this case, there is no question that the payees of the check, Lobitana or Consing, were not the ones who presented the check for payment. Lobitana negotiated and indorsed the check to respondents in exchange for ₱948,000.00. It was respondents who presented the subject check for payment; however, the check was dishonored for reason "PAYMENT STOPPED." In other words, it was not the payee who presented the check for payment; and thus, there was no proper presentment. As a result, liability did not attach to the drawer. Accordingly, no right of recourse is available to respondents against the drawer of the check, petitioner herein, since respondents are not the proper party authorized to make presentment of the subject check.

7. ID.; ID.; RIGHTS OF THE HOLDER; HOLDERS NOT IN DUE COURSE; CONCERNING A HOLDER WHO IS NOT IN DUE COURSE, THE NEGOTIABLE INSTRUMENT IS SUBJECT TO DEFENSES AS IF IT WERE NON-NEGOTIABLE. — [T]the fact that respondents are not holders in due course does not automatically mean that they cannot recover on the check. The Negotiable Instruments Law does not provide that a holder who is not a holder in due course may not in any case recover on the instrument. The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable. Among such defenses is the absence or failure of consideration, which petitioner sufficiently established in this case. Petitioner issued the subject check supposedly for a loan in favor of Consing's group, who turned out to be a syndicate defrauding gullible individuals. Since there is in fact no valid loan to speak of, there is no consideration for the issuance of the check. Consequently, petitioner cannot be obliged to pay the face value of the check.

8. ID.; ID.; ID.; ID.; ID.; DEFENSE OF ABSENCE OR FAILURE OF CONSIDERATION; REMEDY; CASE AT BAR. — Respondents can collect from the immediate indorser, in this case Lobitana. Significantly, Lobitana did not appeal the trial court's decision, finding her solidarily liable to pay, among others, the face value of the subject check. Therefore, the trial court's judgment has long become final and executory as to Lobitana.

APPEARANCES OF COUNSEL

Law Firm of Hermosisima & Inso for petitioner.
Maderazo & Associates for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 16 August 2005 Decision[2] and 30 November 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 57994. The Court of Appeals affirmed the decision of the Regional Trial Court, 7th Judicial Region, Branch 56, Mandaue City (trial court), with the deletion of the award of interest, moral damages, attorney's fees and litigation expenses. The trial court ruled that respondents Maria Luisa Judal-Loot and Vicente Loot are holders in due course of Metrobank Check No. C-MA 142119406 CA and ordered petitioner Robert Dino as drawer, together with co-defendant Fe Lobitana as indorser, to solidarily pay respondents the face value of the check, among others.

The Facts

Sometime in December 1992, a syndicate, one of whose members posed as an owner of several parcels of land situated in Canjulao, Lapu-lapu City, approached petitioner and induced him to lend the group ₱3,000,000.00 to be secured by a real estate mortgage on the properties. A member of the group, particularly a woman pretending to be a certain Vivencia Ompok Consing, even offered to execute a Deed of Absolute Sale covering

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 24-32. Penned by Associate Justice Enrico A. Lanzanas with Associate Justices Arsenio J. Magpale and Sesinando E. Villon, concurring.

[3] *Id.* at 34-36.

the properties, instead of the usual mortgage contract.[4] Enticed and convinced by the syndicate's offer, petitioner issued three Metrobank checks totaling ₱3,000,000.00, one of which is Check No. C-MA-142119406-CA postdated 13 February 1993 in the amount of ₱1,000,000.00 payable to Vivencia Ompok Consing and/or Fe Lobitana.[5]

Upon scrutinizing the documents involving the properties, petitioner discovered that the documents covered rights over government properties. Realizing he had been deceived, petitioner advised Metrobank to stop payment of his checks. However, only the payment of Check No. C-MA- 142119406-CA was ordered stopped. The other two checks were already encashed by the payees.

Meanwhile, Lobitana negotiated and indorsed Check No. C-MA-142119406-CA to respondents in exchange for cash in the sum of ₱948,000.00, which respondents borrowed from Metrobank and charged against their credit line. Before respondents accepted the check, they first inquired from the drawee bank, Metrobank, Cebu-Mabolo Branch which is also their depositary bank, if the subject check was sufficiently funded, to which Metrobank answered in the positive. However, when respondents deposited the check with Metrobank, Cebu-Mabolo Branch, the same was dishonored by the drawee bank for reason "PAYMENT STOPPED."

Respondents filed a collection suit[6] against petitioner and Lobitana before the trial court. In their Complaint, respondents alleged, among other things, that they are holders in due course and for value of Metrobank Check No. C-MA-142119406-CA and that they had no prior information concerning the transaction between defendants.

In his Answer, petitioner denied respondents' allegations that "on the face of the subject check, no condition or limitation

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[4] Records, p. 22.

[5] *Id.*

[6] Docketed as Civil Case No. MAN-1843.

was imposed" and that respondents are holders in due course and for value of the check. For her part, Lobitana denied the allegations in the complaint and basically claimed that the transaction leading to the issuance of the subject check is a sale of a parcel of land by Vivencia Ompok Consing to petitioner and that she was made a payee of the check only to facilitate its discounting.

The trial court ruled in favor of respondents and declared them due course holders of the subject check, since there was no privity between respondents and defendants. The dispositive portion of the 14 March 1996 Decision of the trial court reads:

> In summation, this Court rules for the Plaintiff and against the Defendants and hereby orders:
>
> 1.) defendants to pay to Plaintiff, and severally, the amount of ₱1,000,000.00 representing the face value of subject Metrobank check;
>
> 2.) to pay to Plaintiff herein, jointly and severally, the sum of ₱101,748.00 for accrued and paid interest;
>
> 3.) to pay to Plaintiff, jointly and severally, moral damages in the amount of ₱100,000.00;
>
> 4.) to pay to Plaintiff, jointly and severally, the sum of ₱200,000.00 for attorney's fees; and
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> 5.) to pay to Plaintiff, jointly and severally, litigation expenses in the sum of ₱10,000.00 and costs of the suit.
>
> SO ORDERED.[7]

Only petitioner filed an appeal. Lobitana did not appeal the trial court's judgment.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's finding that respondents are holders in due course of Metrobank Check

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[7] *Rollo*, p. 77.

No. C-MA-142119406-CA. The Court of Appeals pointed out that petitioner's own admission that respondents were never parties to the transaction among petitioner, Lobitana, Concordio Toring, Cecilia Villacarlos, and Consing, proved respondents' lack of knowledge of any infirmity in the instrument or defect in the title of the person negotiating it. Moreover, respondents verified from Metrobank whether the check was sufficiently funded before they accepted it. Therefore, respondents must be excluded from the ambit of petitioner's stop payment order.

The Court of Appeals modified the trial court's decision by deleting the award of interest, moral damages, attorney's fees and litigation expenses. The Court of Appeals opined that petitioner "was only exercising (although incorrectly), what he perceived to be his right to stop the payment of the check which he rediscounted." The Court of Appeals ruled that petitioner acted in good faith in ordering the stoppage of payment of the subject check and thus, he must not be made liable for those amounts.

In its 16 August 2005 Decision, the Court of Appeals affirmed the trial court's decision with modifications, thus:

> WHEREFORE, premises considered, finding no reversible error in the decision of the lower court, WE hereby DISMISS the appeal and AFFIRM the decision of the court *a quo* with modifications that the award of interest, moral damages, attorney's fees and litigation expenses be deleted.
>
> No pronouncement as to costs.
>
> SO ORDERED.[8]

In its 30 November 2005 Resolution, the Court of Appeals denied petitioner's motion for reconsideration.

In denying the petitioner's motion for reconsideration, the Court of Appeals noted that petitioner raised the defense that the check is a crossed check for the first time on appeal (particularly in the motion for reconsideration). The Court of

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[8] *Id.* at 31.

Appeals rejected such defense considering that to entertain the same would be offensive to the basic rules of fair play, justice, and due process.

Hence, this petition.

The Issues

Petitioner raises the following issues:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENTS WERE HOLDERS IN DUE COURSE. THE FACT THAT METROBANK CHECK NO. 142119406 IS A CROSSED CHECK CONSTITUTES SUFFICIENT WARNING TO THE RESPONDENTS TO EXERCISE EXTRAORDINARY DILIGENCE TO DETERMINE THE TITLE OF THE INDORSER.

II. THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION UPON THE GROUND THAT THE ARGUMENTS RELIED UPON HAVE ONLY BEEN RAISED FOR THE FIRST TIME. EQUITY DEMANDS THAT THE COURT OF APPEALS SHOULD HAVE MADE AN EXCEPTION TO PREVENT THE COMMISSION OF MANIFEST WRONG AND INJUSTICE UPON THE PETITIONER.[9]

The Ruling of this Court

The petition is meritorious.

Respondents point out that petitioner raised the defense that Metrobank Check No. C-MA-142119406-CA is a crossed check for the first time in his motion for reconsideration before the Court of Appeals. Respondents insist that issues not raised during the trial cannot be raised for the first time on appeal as it would be offensive to the elementary rules of fair play, justice and due process. Respondents further assert that a change of theory on appeal is improper.

In his Answer, petitioner specifically denied, among others, (1) Paragraph 4 of the Complaint, concerning the allegation that on the face of the subject check, no condition or limitation

[9] *Id.* at 14-15.

was imposed, and (2) Paragraph 8 of the Complaint, regarding the allegation that respondents were holders in due course and for value of the subject check. In his "Special Affirmative Defenses," petitioner claimed that "for want or lack of the prestation," he could validly stop the payment of his check, and that by rediscounting petitioner's check, respondents "took the risk of what might happen on the check." Essentially, petitioner maintained that respondents are not holders in due course of the subject check, and as such, respondents could not recover any liability on the check from petitioner.

Indeed, petitioner did not expressly state in his Answer or raise during the trial that Metrobank Check No. C-MA-142119406-CA is a crossed check. It must be stressed, however, that petitioner consistently argues that respondents are not holders in due course of the subject check, which is one of the possible effects of crossing a check. The act of crossing a check serves as a warning to the holder that the check has been issued for a definite purpose so that the holder thereof must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.[10] Contrary to respondents' view, petitioner never changed his theory, that respondents are not holders in due course of the subject check, as would violate fundamental rules of justice, fair play, and due process. Besides, the subject check was presented and admitted as evidence during the trial and respondents did not and in fact cannot deny that it is a crossed check.

In any event, the Court is clothed with ample authority to entertain issues or matters not raised in the lower courts in the interest of substantial justice.[11] In *Casa Filipina Realty v. Office of the President*,[12] the Court held:

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[10] *State Investment House v. Intermediate Appellate Court*, G.R. No. 72764, 13 July 1989, 175 SCRA 310, 315.

[11] *Phil. Commercial & Industrial Bank v. CA*, 242 Phil. 497, 503-504 (1988). See also *Ortigas, Jr. v. Lufthansa German Airlines*, 159-A Phil. 863, 889 (1975).

[12] 311 Phil. 170, 181 (1995).

[T]he trend in modern-day procedure is to accord the courts broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution which the parties failed to raise or which the lower court ignored. Since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.[13]

Having disposed of the procedural issue, the Court shall now proceed to the merits of the case. The main issue is whether respondents are holders in due course of Metrobank Check No. C-MA 142119406 CA as to entitle them to collect the face value of the check from its drawer or petitioner herein.

Section 52 of the Negotiable Instruments Law defines a holder in due course, thus:

A holder in due course is a holder who has taken the instrument under the following conditions:

(a) That it is complete and regular upon its face;

(b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;

(c) That he took it in good faith and for value;

(d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

In the case of a crossed check, as in this case, the following principles must additionally be considered: A crossed check (a) may not be encashed but only deposited in the bank; (b) may be negotiated only once — to one who has an account with a bank; and (c) warns the holder that it has been issued for a definite purpose so that the holder thereof must inquire if he has received the check pursuant to that purpose; otherwise, he

[13] *Id*.

is not a holder in due course.[14]

Based on the foregoing, respondents had the duty to ascertain the indorser's, in this case Lobitana's, title to the check or the nature of her possession. This respondents failed to do. Respondents' verification from Metrobank on the funding of the check does not amount to determination of Lobitana's title to the check. Failing in this respect, respondents are guilty of gross negligence amounting to legal absence of good faith,[15] contrary to Section 52(c) of the Negotiable Instruments Law. Hence, respondents are not deemed holders in due course of the subject check.[16]

State Investment House v. Intermediate Appellate Court[17] squarely applies to this case. There, New Sikatuna Wood Industries, Inc. sold at a discount to State Investment House three post-dated crossed checks, issued by Anita Peña Chua naming as payee New Sikatuna Wood Industries, Inc. The Court found State Investment House not a holder in due course of the checks. The Court also expounded on the effect of crossing a check, thus:

> Under usual practice, crossing a check is done by placing two parallel lines diagonally on the left top portion of the check. The crossing may be special wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or crossing may be general wherein between two parallel diagonal lines are written the words "and Co." or none at all as in the case at bar, in which case the drawee should not encash the same but merely accept the same for deposit.

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[14] *State Investment House v. Intermediate Appellate Court, supra* note 10; *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, G.R. No. 93048, 3 March 1994, 230 SCRA 643, 648.

[15] *Vicente R. de Ocampo & Co. v. Gatchalian,* No. L-15126, 30 November 1961, 3 SCRA 596, 603.

[16] *State Investment House v. Intermediate Appellate Court, supra* note 10.

[17] *Id.* at 316-317.

> The effect therefore of crossing a check relates to the mode of its presentment for payment. Under Section 72 of the Negotiable Instruments Law, presentment for payment to be sufficient must be made (a) by the holder, or by some person authorized to receive payment on his behalf x x x As to who the holder or authorized person will be depends on the instructions stated on the face of the check.
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> The three subject checks in the case at bar had been crossed generally and issued payable to New Sikatuna Wood Industries, Inc. which could only mean that the drawer had intended the same for deposit only by the rightful person, *i.e.*, the payee named therein. Apparently, it was not the payee who presented the same for payment and therefore, there was no proper presentment, and the liability did not attach to the drawer.
>
> Thus, in the absence of due presentment, the drawer did not become liable. Consequently, no right of recourse is available to petitioner against the drawer of the subject checks, private respondent wife, considering that petitioner is not the proper party authorized to make presentment of the checks in question.

In this case, there is no question that the payees of the check, Lobitana or Consing, were not the ones who presented the check for payment. Lobitana negotiated and indorsed the check to respondents in exchange for ₱948,000.00. It was respondents who presented the subject check for payment; however, the check was dishonored for reason "PAYMENT STOPPED." In other words, it was not the payee who presented the check for payment; and thus, there was no proper presentment. As a result, liability did not attach to the drawer. Accordingly, no right of recourse is available to respondents against the drawer of the check, petitioner herein, since respondents are not the proper party authorized to make presentment of the subject check.

However, the fact that respondents are not holders in due course does not automatically mean that they cannot recover on the check.[18] The Negotiable Instruments Law does not provide that a holder who is not a holder in due course may not in any

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[18] *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, *supra* note 14 at 649.

case recover on the instrument. The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable.[19] Among such defenses is the absence or failure of consideration,[20] which petitioner sufficiently established in this case. Petitioner issued the subject check supposedly for a loan in favor of Consing's group, who turned out to be a syndicate defrauding gullible individuals. Since there is in fact no valid loan to speak of, there is no consideration for the issuance of the check. Consequently, petitioner cannot be obliged to pay the face value of the check.

Respondents can collect from the immediate indorser,[21] in this case Lobitana. Significantly, Lobitana did not appeal the trial court's decision, finding her solidarily liable to pay, among others, the face value of the subject check. Therefore, the trial court's judgment has long become final and executory as to Lobitana.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 16 August 2005 Decision and 30 November 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 57994.

SO ORDERED.

Brion, Del Castillo, Abad, and *Perez, JJ.*, concur.

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[19] *Id.*, citing *Chan Wan v. Tan Kim and Chen So*, 109 Phil. 706 (1960).

[20] Section 28, Negotiable Instruments Law.

[21] *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals, supra*.

SECOND DIVISION

[G.R. No. 172896. April 19, 2010]

ROÑO SEGURITAN *y* JARA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER OF EVIDENCE; COURTS WILL ONLY CONSIDER AS EVIDENCE THAT WHICH HAS BEEN FORMALLY OFFERED; RATIONALE; CASE AT BAR. —[I]t is settled that courts will only consider as evidence that which has been formally offered. The allegation that the results of the autopsy are unworthy of credence was based on a book that was neither marked for identification nor formally offered in evidence during the hearing of the case. Thus, the trial court as well as the appellate court correctly disregarded them. The prosecution was not even given the opportunity to object as the book or a portion thereof was never offered in evidence. A formal offer is necessary since judges are required to base their findings of fact and judgment only – and strictly – upon the evidence offered by the parties at the trial. To rule otherwise would deprive the opposing party of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. Any evidence which a party desires to submit to the courts must be offered formally because a judge must base his findings strictly on the evidence offered by the parties at the trial.

2. CRIMINAL LAW; CRIMINAL LIABILITY; INCURRED BY ANY PERSON COMMITTING A FELONY EVEN IF THE UNLAWFUL ACT DONE BE DIFFERENT FROM THAT WHICH HE INTENDED; CASE AT BAR. — When death resulted, even if there was no intent to kill, the crime is homicide, not just physical injuries, since with respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof. Accordingly, Article 4 of the Revised Penal Code provides: "Art. 4. Criminal liability —

Criminal liability shall be incurred: 1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended. x x x" Petitioner committed an unlawful act by punching Lucrecio, his uncle who was much older than him, and even if he did not intend to cause the death of Lucrecio, he must be held guilty beyond reasonable doubt for killing him pursuant to the above-quoted provision. He who is the cause of the cause is the cause of the evil caused.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL. — [W]e find that both the trial court and the appellate court correctly appreciated the evidence presented before them. Both courts did not overlook facts and circumstances that would warrant a reevaluation of the evidence. Accordingly, there is no reason to digress from the settled legal principle that the appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter as a trier of facts, is in a better position to appreciate the same. Further, it is settled that findings of fact of the trial court are accorded greatest respect by the appellate court absent any abuse of discretion. There being no abuse of discretion in this case, we affirm the factual findings of the trial court.

4. CRIMINAL LAW; HOMICIDE; PENALTY; CASE AT BAR. — The penalty for Homicide under Article 249 of the Revised Penal Code is *reclusion temporal* the range of which is from 12 years and one day to 20 years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* the range of which is from six years and one day to 12 years. In this case, we find that the mitigating circumstance of no intention to commit so grave a wrong as that committed, attended the commission of the crime. Thus, the appellate court correctly imposed the indeterminate penalty of six years and one day of *prision mayor*, as minimum, to 12 years and one day of *reclusion temporal*, as maximum.

5. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; WHEN AWARDED. — [C]ivil indemnity must also be awarded to the heirs of Lucrecio without need of proof other than the fact that a crime was committed resulting in the death of the victim and that petitioner was responsible therefor. Accordingly, we award the sum of ₱50,000.00 in line with current jurisprudence.

6. ID.; ID.; AWARD FOR LOSS OF EARNING CAPACITY, PROPER IN CASE AT BAR. — The award of ₱135,331.00 for the loss of earning capacity was also in order. The prosecution satisfactorily proved that the victim was earning an annual income of ₱14,000.00 from the harvest of pineapples. Besides, the defense no longer impugned this award of the trial court.

7. ID.; ID.; ACTUAL DAMAGES; CANNOT BE AWARDED WHEN EXPENSES ARE NOT SUPPORTED BY RECEIPTS. — It is error for the trial court and the appellate court to award actual damages of ₱30,000.00 for the expenses incurred for the death of the victim. We perused the records and did not find evidence to support the plea for actual damages. The expenses incurred in connection with the death, wake and burial of Lucrecio cannot be sustained without any tangible document to support such claim. While expenses were incurred in connection with the death of Lucrecio, actual damages cannot be awarded as they are not supported by receipts.

8. ID.; ID.; TEMPERATE DAMAGES; MAY BE RECOVERED WHEN PECUNIARY LOSS HAS BEEN SUFFERED BUT THE AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVEN WITH CERTAINTY. — In lieu of actual damages, the heirs of the victim can still be awarded temperate damages. When pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss. In this regard, the amount of ₱25,000.00 is in accordance with recent jurisprudence.

9. ID.; ID.; MORAL DAMAGES; AWARDED IN CASE AT BAR. — Moral damages was correctly awarded to the heirs of the victim without need of proof other than the fact that a crime was committed resulting in the death of the victim and that the accused was responsible therefor. The award of ₱50,000.00 as moral damages conforms to existing jurisprudence.

APPEARANCES OF COUNSEL

Bienvenido R. Miguel for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record.[1] It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below. In this case, we hold that the trial court did not overlook such factual matters; consequently, we find no necessity to review, much less, overturn its factual findings.

This petition for review on *certiorari* assails the Decision[2] of the Court of Appeals (CA) dated February 24, 2006 in CA-G.R. CR No. 25069 which affirmed with modification the Judgment[3] of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 06 in Criminal Case No. VI-892 finding petitioner Roño Seguritan *y* Jara guilty beyond reasonable doubt of the crime of homicide. Likewise impugned is the Resolution[4] dated May 23, 2006 which denied the Motion for Reconsideration.[5]

Factual Antecedents

On October 1, 1996, petitioner was charged with Homicide in an Information,[6] the accusatory portion of which reads as follows:

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[1] *People v. Narca*, 341 Phil. 713-714 (1997).

[2] CA *rollo*, pp. 155-164; penned by Associate Justice Santiago Javier Ranada and concurred in by Associate Justices Roberto A. Barrios and Mario L. Guariña III.

[3] Records, pp. 186-194; penned by Judge Rolando R. Velasco.

[4] *Rollo*, p. 33.

[5] CA *rollo*, pp. 164-175.

[6] Records, p. 1.

That on or about November 25,1995, in the municipality of Gonzaga, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, ROÑO SEGURITAN *y* JARA *alias* Ranio, with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and box one Lucrecio Seguritan, inflicting upon the latter head injuries which caused his death.

Contrary to law.

During the arraignment, petitioner entered a plea of not guilty. Thereafter, trial ensued.

The Version of the Prosecution

In the afternoon of November 25, 1995, petitioner was having a drinking session with his uncles Lucrecio Seguritan (Lucrecio), Melchor Panis (Melchor) and Baltazar Panis (Baltazar), in the house of Manuel dela Cruz in *Barangay* Paradise, Gonzaga, Cagayan. Petitioner, who was seated beside Lucrecio, claimed that Lucrecio's carabao entered his farm and destroyed his crops. A heated discussion thereafter ensued, during which petitioner punched Lucrecio twice as the latter was about to stand up. Petitioner's punches landed on Lucrecio's right and left temple, causing him to fall face-up to the ground and hit a hollow block which was being used as an improvised stove.

Lucrecio lost consciousness but was revived with the assistance of Baltazar. Thereafter, Lucrecio rode a tricycle and proceeded to his house in the neighboring *barangay* of Calayan, Cagayan. Upon his arrival, his wife noticed blood on his forehead. Lucrecio explained that he was stoned, then went directly to his room and slept.

At around 9 o'clock in the evening, Lucrecio's wife and daughter noticed that his complexion has darkened and foamy substance was coming out of his mouth. Attempts were made to revive Lucrecio but to no avail. He died that same night.

After the burial of Lucrecio on December 4, 1995, his wife learned of petitioner's involvement in her husband's death. Thus, she sought the assistance of the National Bureau of Investigation

(NBI). NBI Medico-Legal Officer Dr. Antonio Vertido (Dr. Vertido) exhumed Lucrecio's body and performed the autopsy. Dr. Vertido found hematomas in the scalp located in the right parietal and left occipital areas, a linear fracture in the right middle *fossa*, and a subdural hemorrhage in the right and left cerebral hemisphere. Dr. Vertido concluded that Lucrecio's cause of death was traumatic head injury.[7]

On May 21, 1996, Melchor executed a sworn statement before the Gonzaga Police Station recounting the events on that fateful day, including the punching of Lucrecio by petitioner.

At the time of Lucrecio's death, he was 51 years old and earned an annual income of ₱14,000.00 as a farmer.

The Version of the Defense

Petitioner denied hitting Lucrecio and alleged that the latter died of cardiac arrest. Petitioner claimed that he suddenly stood up during their heated argument with the intent to punch Lucrecio. However, since the latter was seated at the opposite end of the bench, Lucrecio lost his balance and fell before he could be hit. Lucrecio's head hit the improvised stove as a result of which he lost consciousness.

Petitioner presented Joel Cabebe, the Assistant Registration Officer of Gonzaga, Cagayan, and Dr. Corazon Flor, the Municipal Health Officer of Sta. Teresita, Cagayan, to prove that Lucrecio died of a heart attack. These witnesses identified the Certificate of Death of Lucrecio and the entry therein which reads: "Antecedent cause: T/C cardiovascular disease."[8]

Ruling of the Regional Trial Court

On February 5, 2001, the trial court rendered a Decision convicting petitioner of homicide. The dispositive portion of the Decision reads:

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[7] *Id.* at 121.

[8] *Id.* at 133.

WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt of the crime of homicide and sentences the accused to an indeterminate sentence of 6 years and 1 day of *prision mayor* as minimum to 17 years and 4 months of *reclusion temporal* as maximum. The accused is ordered to pay the heirs of the late Lucrecio Seguritan the amount of ₱30,000.00 as actual damages and the amount of ₱135,331.00 as loss of earning capacity and to pay the costs.

SO ORDERED.[9]

The Decision of the Court of Appeals

On appeal, the CA affirmed with modification the Judgment of the RTC.

Thus:

WHEREFORE, the judgment appealed from is partly AFFIRMED, WITH MODIFICATION, to read as follows: The Court finds the accused GUILTY beyond reasonable doubt of the crime of homicide and sentences the accused to an indeterminate penalty of SIX (6) YEARS AND ONE (1) DAY of *prision mayor*, as minimum, to TWELVE (12) YEARS AND ONE (1) DAY of *reclusion temporal*, as maximum. The accused Roño Seguritan is ordered to pay the heirs of the late Lucrecio Seguritan the amount of ₱ 30,000.00 as actual damages, the amount of ₱135,331.00 as loss of earning capacity, ₱50,000.00 as moral damages and to pay the costs.

SO ORDERED.[10]

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its Resolution dated May 23, 2006.

Issues

Thus, this petition for review raising the following issues:

I

The Court of Appeals erred in affirming the trial court's judgment of conviction.

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[9] *Id.* at 194.

[10] CA *rollo*, p. 163.

II

The Court of Appeals erred in convicting the accused of the crime of homicide.[11]

Our Ruling

The petition is denied.

Petitioner disputes the conclusion that the fracture on the right middle *fossa* of the skull, beneath the area where a hematoma developed was due to the blow he delivered because according to the testimony of Dr. Vertido, the fracture may also be caused by one falling from a height. Petitioner also maintains that the punches he threw at Lucrecio had nothing to do with the fatal head injuries the latter suffered. According to him, Lucrecio sustained the head injuries when he accidentally hit the hollow block that was used as an improvised stove, after falling from the opposite end of the bench. Petitioner insists that Lucrecio died due to a fatal heart attack.

In fine, petitioner contends that the appellate court, in affirming the judgment of the trial court, overlooked material and relevant factual matters which, if considered, would change the outcome of the case.

We are not persuaded.

It is on record that Lucrecio suffered two external injuries and one internal injury in his head. The autopsy report showed that Lucrecio died of internal hemorrhage caused by injuries located at the upper right portion of the head, left side of the center of his head, and a "fracture, linear, right middle *fossa*, hemorrhage, subdural, right and left cerebral hemisphere."

We find no reason to doubt the findings of the trial court, as affirmed by the appellate court, that petitioner punched Lucrecio twice causing him to fall to the ground. Melchor categorically testified that petitioner punched Lucrecio twice and as a result, Lucrecio fell to the ground and lost consciousness. Melchor would not have testified falsely against petitioner, who was his

[11] *Rollo*, p. 15.

nephew. He even hesitated to testify as shown by his execution of a sworn statement just after the autopsy of Lucrecio which revealed that the cause of death was traumatic head injury attributed to petitioner.

Melchor's eyewitness account of the fist blows delivered by petitioner to Lucrecio and the manner by which the latter fell from the bench and hit his head on the improvised stove is consistent with the autopsy findings prepared and testified to by Dr. Vertido. Thus:

x x x x x x x x x

Court:

Q: What is the right parietal area?
A: This is the right parietal area, sir.

(Witness pointing to the upper right portion of the head).

: And then the left occipital area, this is left occipital area with a hematoma again measuring 5.0 x 4.0 centimeters, sir.

(Witness pointing to the back left part, middle back portion)[12]

x x x x x x x x x

Fiscal Feril:

Q: What about this which reads "Fracture, linear, right middle fossa," where is this injury located?

x x x x x x x x x

Court:

Q: Will you point that from your head?
A: x x x [A]t the base of the brain of the skull, sir. If you look at the head at the cut portion, the fracture is located on the base of the brain, particularly on the right mid-cranial fossa, sir.[13]

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[12] TSN, December 15, 1998, p. 32.

[13] *Id.* at 31-32.

x x x x x x x x x

Fiscal Feril:

Q: Could it be possible that the victim suffered the injuries specifically the fracture while he was falling to the ground, hitting solid objects in the process?
A: Well, with regard to the hematomas there is a possibility [that it could be caused by] falling from a height x x x although it produces hematoma, sir.

Court:

Q: Falling from a height?
A: Yes, sir.

Fiscal Feril:

Q: If an external force is administered to such victim, such as x x x fist blow[s] would it accelerate this force and cause these injuries?
A: Definitely it could accelerate, sir.[14]

We find no merit in petitioner's argument that he could not be held liable for the head fracture suffered by Lucrecio. The height from which he stood to deliver the fist blows to Lucrecio's head is sufficient to cause the fracture.

The testimony of Dr. Vertido also ruled out petitioner's contention that Lucrecio died of a heart attack. The fact that Lucrecio's cause of death is internal hemorrhage resulting from the head injuries suffered during his encounter with the petitioner and the certainty that he had no heart problem are evident in the following portion of Dr. Vertido's testimony:

Atty. Antonio:

Q: Did you notice anything unusual in the heart of Lucrecio Seguritan?
A: Well, with regard to our examination of the heart Your Honor I limit only the examination on the atomic portion, gross findings, when we say gross findings that can be seen by the eyes and so if for

[14] *Id.* at 37-38.

example other that the findings on the brain, if I have not seen my injury from the brain then my next examination to contemplate would be to bring a portion of each particular organ to Manila and have it subjected to a hispathologic examination over the microscope. But then we found out that there is an injury to the brain so why should I now perform a hispathologic examination on the heart, when in fact there is already a gross finding on the brain, meaning that the cause of death now is of course, this traumatic injury, sir.

Court:

Q: Supposed the victim had a heart attack first and then fell down later, can you determine then x x x the cause of death?

A: Well, your Honor as I said a while ago I opened up the heart, I examined the heart grossly and there was no findings that would find to a heart attach on its function, the heart was okay and coronaries were not thickened so I said well – grossly there was no heart attack.[15]

x x x x x x x x x

Court:

Q: Since you were conducting just a cursory examination of the heart, my question again is that, could you have determined by further examination whether the victim suffered a heart attack before the injuries on the head were inflicted?

A: That is why sir, I said, I examined the heart and I found out that there was nothing wrong with the heart, and why should I insist on further examining the heart.[16]

The notation in the Certificate of Death of Lucrecio that he died of a heart attack has no weight in evidence. Dr. Corazon

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[15] TSN, December 15, 1998, pp. 41-42.

[16] *Id.* at 44-45.

Flor, who signed said document testified that she did not examine the cadaver of Lucrecio. She stated that a circular governing her profession did not require her to conduct an examination of Lucrecio's corpse, as long as the informant tells her that it is not a medico-legal case. Renato Sidantes (Renato), the brother-in-law of Lucrecio who applied for the latter's death certificate, had no knowledge of the real cause of his death. Thus, Dr. Flor was mistakenly informed by Renato that the cause of Lucrecio's death was heart attack.

The petitioner belatedly contends that the delay in the autopsy of Lucrecio's body and its embalming compromised the results thereof. To substantiate his claim, he quotes the book entitled Legal Medicine authored by Dr. Pedro Solis, *viz*:

> "a dead body must not be embalmed before the autopsy. The embalming fluid may render the tissue and blood unfit for toxilogical (sic) analyses. The embalming may alter the gross appearance of the tissues or may result to a wide variety of artifacts that tend to destroy or obscure evidence."
>
> "the body must be autopsied in the same condition when found at the crime scene. A delay in the performance may fail or modify the possible findings thereby not serving the interest of justice."[17]

Petitioner's reliance on this citation is misplaced. Petitioner failed to adduce evidence that the one month delay in the autopsy indeed modified the possible findings. He also failed to substantiate his claim that the embalming fluid rendered the tissue and blood of Lucrecio unfit for toxicological analysis.

Further, it is settled that courts will only consider as evidence that which has been formally offered.[18] The allegation that the results of the autopsy are unworthy of credence was based on a book that was neither marked for identification nor formally offered in evidence during the hearing of the case. Thus, the trial court as well as the appellate court correctly disregarded them. The prosecution was not even given the opportunity to

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[17] *Rollo*, p. 21.

[18] RULES OF COURT, Rule 132, Section 34.

object as the book or a portion thereof was never offered in evidence.[19]

A formal offer is necessary since judges are required to base their findings of fact and judgment only — and strictly — upon the evidence offered by the parties at the trial. To rule otherwise would deprive the opposing party of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below.[20] Any evidence which a party desires to submit to the courts must be offered formally because a judge must base his findings strictly on the evidence offered by the parties at the trial.[21]

We are not impressed with petitioner's argument that he should be held liable only for reckless imprudence resulting in homicide due to the absence of intent to kill Lucrecio. When death resulted, even if there was no intent to kill, the crime is homicide, not just physical injuries, since with respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof.[22] Accordingly, Article 4 of the Revised Penal Code provides:

> Art. 4. Criminal liability — Criminal liability shall be incurred:
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> 1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.
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> x x x x x x x x x

Petitioner committed an unlawful act by punching Lucrecio, his uncle who was much older than him, and even if he did not intend to cause the death of Lucrecio, he must be held guilty beyond reasonable doubt for killing him pursuant to the above-

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[19] *Candido v. Court of Appeals*, 323 Phil. 95, 99 (1996).

[20] *Id.* at 100.

[21] *Id.*

[22] *United States v. Gloria*, 3 Phil. 333, 335 (1904).

quoted provision. He who is the cause of the cause is the cause of the evil caused.[23]

Considering the foregoing discussion, we find that both the trial court and the appellate court correctly appreciated the evidence presented before them. Both courts did not overlook facts and circumstances that would warrant a reevaluation of the evidence. Accordingly, there is no reason to digress from the settled legal principle that the appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter as a trier of facts, is in a better position to appreciate the same.

Further, it is settled that findings of fact of the trial court are accorded greatest respect by the appellate court absent any abuse of discretion.[24] There being no abuse of discretion in this case, we affirm the factual findings of the trial court.

Penalty and Damages

The penalty for Homicide under Article 249 of the Revised Penal Code is *reclusion temporal* the range of which is from 12 years and one day to 20 years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* the range of which is from six years and one day to 12 years. In this case, we find that the mitigating circumstance of no intention to commit so grave a wrong as that committed, attended the commission of the crime. Thus, the appellate court correctly imposed the indeterminate penalty of six years and one day of *prision mayor*, as minimum, to 12 years and one day of *reclusion temporal*, as maximum.

As regards the amount of damages, civil indemnity must also be awarded to the heirs of Lucrecio without need of proof other than the fact that a crime was committed resulting in the death of the victim and that petitioner was responsible therefor.[25]

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[23] *People v. Ural*, 155 Phil. 116, 123 (1974).

[24] *People v. San Gabriel*, 323 Phil. 102, 108 (1996).

[25] *People v. Diaz*, 443 Phil. 67, 90-91 (2003).

Accordingly, we award the sum of ₱50,000.00 in line with current jurisprudence.[26]

The award of ₱135,331.00 for the loss of earning capacity was also in order.[27] The prosecution satisfactorily proved that the victim was earning an annual income of ₱14,000.00 from the harvest of pineapples. Besides, the defense no longer impugned this award of the trial court.

However, the other awards of damages must be modified. It is error for the trial court and the appellate court to award actual damages of ₱30,000.00 for the expenses incurred for the death of the victim. We perused the records and did not find evidence to support the plea for actual damages. The expenses incurred in connection with the death, wake and burial of Lucrecio cannot be sustained without any tangible document to support such claim. While expenses were incurred in connection with the death of Lucrecio, actual damages cannot be awarded as they are not supported by receipts.[28]

In lieu of actual damages, the heirs of the victim can still be awarded temperate damages. When pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.[29] In this regard, the amount of ₱25,000.00 is in accordance with recent jurisprudence.[30]

Moral damages was correctly awarded to the heirs of the victim without need of proof other than the fact that a crime

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[26] *People v. Satonero*, G.R. No. 186233, October 2, 2009.

[27] See *People v. Nullan*, 365 Phil. 227, 257-258 (1999).

[28] *People v. San Gabriel, supra* note 24.

[29] *Canada v. All Commodities Marketing Corp.*, G.R. No. 146141, October 17, 2008, 569 SCRA 321, 329.

[30] *People v. Bascugin*, G.R. No. 184704, June 30, 2009.

was committed resulting in the death of the victim and that the accused was responsible therefor.[31] The award of ₱50,000.00 as moral damages conforms to existing jurisprudence.[32]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR No. 25069 finding petitioner Roño Seguritan *y* Jara guilty of homicide and sentencing him to suffer the penalty of six years and one day of *prision mayor* as minimum, to 12 years and one day of *reclusion temporal* as maximum, and to pay the heirs of Lucrecio Seguritan the amounts of ₱50,000.00 as moral damages and ₱135,331.00 as loss of earning capacity is *AFFIRMED with MODIFICATION* that petitioner is further ordered to pay ₱25,000.00 as temperate damages in lieu of actual damages, and ₱50,000.00 as civil indemnity.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 175532. April 19, 2010]

ROMEO BASAY, JULIAN LITERAL and JULIAN ABUEVA, *petitioners, vs.* **HACIENDA CONSOLACION, and/or BRUNO BOUFFARD III, JOSE RAMON BOUFFARD, MALOT BOUFFARD, SPOUSES CARMEN and STEVE BUMANLAG, BERNIE BOUFFARD, ANALYN BOUFFARD, and DONA BOUFFARD, as Owners,** *respondents.*

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[31] *People v. San Gabriel, supra* note 24.

[32] *People v. Satonero, supra* note 26.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; NO ILLEGAL DISMISSAL IN CASE AT BAR; RECORDS ARE BEREFT OF ANY INDICATION THAT PETITIONERS WERE PREVENTED FROM RETURNING TO WORK OR OTHERWISE DEPRIVED OF ANY WORK ASSIGNMENT BY RESPONDENTS.— We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents.

2. ID.; ID.; FACT THAT PETITIONERS WERE STILL LISTED AND INCLUDED IN RESPONDENT'S PAYROLL OF NOVEMBER 12 TO 16, 2001, IS AN INDICATION OF RESPONDENT'S LACK OF INTENTION TO DISMISS THEM.— Respondents presented a declaration made under oath by Leopoldo Utlang, Jr., assistant supervisor of the *hacienda*, attesting that petitioners were asked to return to do some work for the *hacienda* but refused to do so upon the advice of their lawyer. Interestingly too, as late as November of 2001 or even after almost three months from the filing of the illegal dismissal case, the names of Literal and Basay were still listed and included in respondents' payroll as can be gleaned in the Master Voucher covering the employees' payroll of November 12 to 16, 2001. While a voucher does not necessarily prove payment, it is an acceptable documentary record of a business transaction. As such, entries made therein, being entered in the ordinary or regular course of business, enjoy the presumption of regularity. Hence, on the basis of this material proof evincing respondents' intention to retain petitioners as employees, we are not convinced that petitioners were told to stop working or were prevented from working in the *hacienda*. This may well be an indication of respondents' lack of intention to dismiss petitioners from employment since they were still

considered employees as of that time. Records are likewise bereft of any showing that to date, respondents had already terminated petitioners from employment.

3. ID.; ID.; SINCE THERE WAS NO DISMISSAL TO SPEAK OF, THERE CAN BE NO QUESTION AS TO THE LEGALITY OR ILLEGALITY THEREOF.— We are not persuaded by petitioners' contention that nothing was presented to establish their intention of abandoning their work, or that the fact that they filed a complaint for illegal dismissal negates the theory of abandonment. It bears emphasizing that this case does not involve termination of employment on the ground of abandonment. As earlier discussed, there is no evidence showing that petitioners were actually dismissed. Petitioners' filing of a complaint for illegal dismissal, irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether they have been illegally dismissed. All circumstances surrounding the alleged termination should also be taken into account. In *Abad v. Roselle Cinema*, we ruled that the substantial evidence proffered by the employer that it had not terminated the employee should not be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. We held that such *non sequitur* reasoning cannot take the place of the evidence of both the employer and the employee. Given that there was no dismissal to speak of, there can be no question as to the legality or illegality thereof.

4. ID.; ID.; PETITIONERS *BASAY* AND *LITERAL* ARE ENTITLED TO SALARY DIFFERENTIALS FOR TWO YEARS AND PROPORTIONATE 13TH MONTH PAY.— We agree with the petitioners that the issue on the admissibility of the Master Voucher, which does not show that they actually received the amount of salary indicated therein, was raised in their motion for reconsideration of the NLRC Decision dated March 22, 2004 where the labor tribunal ruled that petitioners were duly compensated for their work on the basis of such voucher. At any rate, even if its admission as evidence is not put into issue, still, the Master Voucher did not prove that petitioners were indeed paid the correct amount of wages. A perusal of the Master Voucher shows that it covers the employees' payroll for the period of November 12-16, 2001 only. Clearly, the Master Voucher cannot constitute as proof that petitioners were duly paid for other periods not covered

by such voucher. No other pertinent vouchers, payrolls, records or other similar documents have been presented as proof of payment of the correct amount of salaries paid, particularly, for the years 1998 and 1999. As a general rule, one who pleads payment has the burden of proving it. Consequently, respondents failed to discharge the burden of proving payment thereby making them liable for petitioners' claim for salary differentials. We thus reinstate the Labor Arbiter's award of salary differentials for 1998 and 1999, computed at 6 months per year of service. However, the Labor Arbiter's computation must be modified pursuant to Wage Order No. ROVII-07. Under this wage order, the minimum wage rate of sugarcane plantation workers is at ₱130.00/day. As regards the 13th month pay, respondents were able to adduce evidence that the benefit was given to the employees for the years 1998, 1999, and 2000. However, for an employee who has been separated from service before the time for payment of the 13th month pay, he is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his separation. The NLRC's award of proportionate 13th month pay computed from January 1, 2001 to August 29, 2001 in favor of Basay and Literal, is therefore proper.

5. ID.; ID.; PETITIONER *ABUEVA* IS NOT AN EMPLOYEE, THUS NOT ENTITLED TO HIS CLAIMS.— As for petitioner Abueva, he is not entitled to his claims. The NLRC excluded Abueva in its judgment award, ruling that he is not an employee but a mere contractor. The existence of an employer-employee relationship is ultimately a question of fact. Settled is the rule that only errors of law are generally reviewed by this Court. Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the CA, must be accorded high respect, if not finality. The elements to determine the existence of an employment relationship are: (1) selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. In filing a complaint for illegal dismissal, it is incumbent upon Abueva to prove the relationship by substantial evidence. In this regard, petitioners claim that Abueva has worked with respondents for more than a year already and was allowed to stay inside the *hacienda*. As such, he is a regular employee entitled to monetary claims. However, petitioners have not

presented competent proof that respondents engaged the services of Abueva; that respondents paid his wages or that respondents could dictate what his conduct should be while at work. In other words, Abueva's allegations did not establish that his relationship with respondents has the attributes of employer-employee on the basis of the above-mentioned four-fold test. Therefore, Abueva was not able to discharge the burden of proving the existence of an employer-employee relationship. Moreover, Abueva was not able to refute respondents' assertions that he hires other men to perform weeding job in the hacienda and that he is not exclusively working for respondents.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for petitioners.
Rafael C. Orillana for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish the fact of his or her dismissal.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated June 7, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 00313, which affirmed the March 22, 2004 Decision[3] of the National Labor Relations Commission (NLRC), dismissing the illegal dismissal case filed by petitioners against respondents.

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[1] *Rollo*, pp. 14-37.

[2] *Id.* at 164-172; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Apolinario D. Bruselas Jr. and Agustin S. Dizon.

[3] *Id.* at 137-141; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.

Factual Antecedents

Respondents hired petitioners Romeo Basay (Basay) in 1967 and Julian Literal (Literal) in 1984, as tractor operators, and petitioner Julian Abueva (Abueva) in 1989, as laborer, in the *hacienda* devoted for sugar cane plantation.

On August 29, 2001, petitioners filed a complaint[4] for illegal dismissal with monetary claims against respondents. They alleged that sometime in July 2001, respondents verbally informed them to stop working. Thereafter, they were not given work assignments despite their status as regular employees. They alleged that their termination was done in violation of their right to substantive and procedural due process. Petitioners also claimed violation of Minimum Wage Law and non-payment of overtime pay, premium pay for holiday and rest day, five days service incentive leave pay, separation pay and 13th month pay. They also prayed for damages and attorney's fees.

Respondents denied petitioners' allegations. As regards Abueva, respondents averred that he is not an employee but a mere contractor in the hacienda. According to respondents, Abueva hired other men to perform weeding jobs and even entered into contract with neighboring *haciendas* for similar jobs. Respondents alleged that Abueva's name does not appear in the payroll, thus indicating that he is not an employee. As such, there can be no dismissal to speak of, much less an illegal dismissal.

With regard to petitioners Literal and Basay, respondents admitted that both are regular employees, each receiving ₱130.00 per day's work as evidenced by a Master Voucher.[5] However, respondents denied having illegally dismissed them and asserted that they abandoned their jobs.

Respondents alleged that Literal was facing charges of misconduct, insubordination, damaging and taking advantage

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[4] *Id.* at 214- 216. The complaints were later amended on September 27, 2001, *id.* at 74-76.

[5] Voucher covering the payroll for the period November 12-16, 2001, Annex "1" of Respondents' Position Paper, *Id.* at 96.

of *hacienda* property, and unauthorized cultivation of a portion of the hacienda. Literal was ordered to explain; instead of complying, Literal did not anymore report for work. Instead, he filed a complaint for illegal dismissal.

Respondents asserted that they sent a representative to convince petitioners to return but to no avail. Respondents maintained that they have been religiously giving 13th month pay to their employees as evidenced by a voucher[6] corresponding to year 2000.

Ruling of the Labor Arbiter

On December 19, 2001, the Labor Arbiter rendered a Decision[7] exonerating respondents from the charge of illegal dismissal as petitioners were the ones who did not report for work despite respondents' call. The Labor Arbiter, however, awarded petitioners' claim of 13th month pay and salary differentials. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered declaring the Respondent not guilty of Illegal Dismissal but is however directed to pay the complainants their 13th Month Pay covering the years 1998 and 1999, and their Salary Differentials for 2 years at 6 months per year of service. The computation of the foregoing monetary awards are as follows:
>
> I - 13th Month Pay: (For Each Complainant)
>
> 1998 & 1999 = 2 years or 12 months @ 6 months per year of service
>
> ₱145.00/day x 26 days = ₱3,770.00/mo.
>
> ₱3,770.00/mo. x 12 mos. = $\frac{₱45,240.00}{6}$ = ₱7,540.00

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[6] Voucher dated January 4, 2000, Annex "5" of Respondents' Position Paper, *Id.* at 100-102.

[7] *Id.* at 105-110.

II – Salary Differential:

(a) Romeo Basay:

Basic Pay	=	₱145.00/day
Salary Received	=	₱122.00/day
Salary Differential	=	₱ 23.00/day

1998 & 1999 = 2 years or 312 days

₱23.00/day x 312 days = ₱7,176.00

(b) Julian Literal:

Basic Pay	=	₱145.00/day
Salary Received	=	₱ 91.00/day
Salary Differential	=	₱ 54.00/day

1998 & 1999 = 2 years or 312 days

₱54.00/day x 312 days = ₱16,848.00

(c) Julian Abueva:

Basic Pay	=	₱145.00/day
Salary Received	=	₱ 91.50/day
Salary Differential	=	₱ 53.50/day

1998 & 1999 = 2 years or 312 days

₱53.50/day x 312 days = ₱16, 692.00

SUMMARY

1.	ROMEO BASAY:		
	a) 13th Month Pay	= ₱7,540.00	
	b) Salary Differential	= ₱7,176.00	
	Total		₱14,716.00
2.	JULIAN LITERAL		
	a) 13th Month Pay	= ₱ 7,540.00	
	b) Salary Differential	= ₱16,848.00	
	Total		₱24,388.00
3.	JULIAN ABUEVA		
	a) 13th Month Pay	= ₱ 7,540.00	
	b) Salary Differential	= ₱16,692.00	
	Total		₱24,232.00

GRAND TOTAL . . . . . ₱63,336.00

Ten Percent (10%) Attorney's Fees is also adjudicated from the total monetary award.

SO ORDERED.[8]

Ruling of the National Labor Relations Commission

Both parties sought recourse to the NLRC. Petitioners filed a Partial Appeal[9] to the Decision declaring respondents not guilty of illegal dismissal. They argued that there was no proof of clear and deliberate intent to abandon their work. On the contrary, their filing of an illegal dismissal case negates the intention to abandon. Petitioners likewise alleged that respondents failed to observe procedural due process.

Respondents, for their part, filed a Memorandum on Appeal[10] with respect to the award of salary differentials and 13th month pay to petitioners. Respondents averred that the Labor Arbiter erred in finding that petitioners are entitled to receive a minimum wage of ₱145.00/day instead of ₱130.00/day which is the minimum wage rate for sugarcane workers in Negros Oriental per Wage Order No. ROVII-07.[11] Respondents likewise presented vouchers[12] to prove payment of 13th month pay for the years 1998 and 1999.

The NLRC, in its Decision[13] dated March 22, 2004, found merit in respondents' appeal. It ruled that respondents have satisfactorily proven payment of the correct amount of wages and 13th month pay for the years 1998, 1999 and 2000, as shown in the Master Voucher indicating the workers' payroll and the various vouchers for 13th month pay. The NLRC further ruled that Abueva is not an employee of the *hacienda* but a mere contractor; thus, he is not entitled to any of his claims.

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[8] *Id.* at 108-109.

[9] *Id.* at 111-114.

[10] *Id.* at 115-124.

[11] Annex "2" of Respondents' Memorandum on Appeal, *Id.* at 131.

[12] Annex "3" of Respondents' Memorandum on Appeal, *Id.* at 132-135.

[13] *Supra* note 3.

The NLRC thus affirmed with modification the Decision of the Labor Arbiter, *viz*:

> WHEREFORE, finding complainants not illegally dismissed, judgment is hereby rendered **AFFIRMING** the Decision of the Labor Arbiter dated December 13, 2001, with the **MODIFICATION** that complainants Julian Literal and Romeo Basay are not entitled to their claims for salary differentials and 13th month pay for lack of legal basis. However, respondents are ordered to pay complainants Julian Literal and Romeo Basay proportionate 13th month pay computed from January 1, 2001 to August 29, 2001.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[14]

Petitioners filed a Motion for Reconsideration[15] which was denied by the NLRC in a Resolution[16] dated September 3, 2004.

Ruling of the Court of Appeals

Aggrieved, petitioners filed with the CA a petition for *certiorari.* On June 7, 2006, however, the CA dismissed the petition and affirmed the findings of the NLRC. It opined that respondents have manifested their willingness to retain petitioners but the latter intentionally abandoned their work. The CA also struck down petitioners' contention that abandonment is inconsistent with the filing of a complaint for illegal dismissal as this rule applies only when a complainant seeks reinstatement and not when separation pay is instead prayed for, as in the case of petitioners. As to the issue posed by petitioners assailing the admissibility of the Master Voucher due to lack of petitioners' authentic signatures, the CA refrained from resolving the matter since the issue was only raised for the first time on appeal.

Petitioners moved for reconsideration, but to no avail.

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[14] *Rollo*, p. 141.

[15] *Id.* at 142-154.

[16] *Id.* at 158.

Issue

Hence, this petition raising the issue of whether petitioners were illegally dismissed and are entitled to their money claims.

Petitioners contend that the CA erred in affirming the findings of the labor tribunals that they deliberately abandoned their work on the basis of respondents' self-serving allegation that they sent emissaries to persuade them to return to work. They maintain that in the absence of competent evidence to show clear intention to sever the employment relationship and compliance with the two-notice rule, no abandonment can exist. Moreover, the theory that abandonment of work is inconsistent with the filing of a complaint for illegal dismissal is applicable in the present case since what was prayed for in the complaint was reinstatement, contrary to the CA's finding that they were asking for separation pay. Petitioners likewise insist that the CA gravely erred in holding that they assailed the admissibility of the Master Voucher for the first time only during appeal. They claim that such issue was raised in their motion for reconsideration of the NLRC Decision. Finally, petitioners allege that the fact that they were staying inside the premises of the *hacienda* and had been working therein for more than a year is an indication that they are regular employees entitled to their monetary claims, as correctly found by the Labor Arbiter.

Our Ruling

The petition is partly meritorious.

There was no illegal dismissal.

We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment.[17] The one who alleges a fact has the burden of proving it and the

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[17] *Ledesma, Jr. v. National Labor Relations Commission*, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370.

proof should be clear, positive and convincing.[18] In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents.

The CA, in sustaining the Labor Arbiter and NLRC's finding that there was no illegal dismissal, ruled that respondents have manifested their willingness to retain petitioners in their employ. Petitioners, however, complained that this finding is anchored on mere allegations of respondents.

We do not agree. Respondents presented a declaration[19] made under oath by Leopoldo Utlang, Jr., assistant supervisor of the *hacienda*, attesting that petitioners were asked to return to do some work for the *hacienda* but refused to do so upon the advice of their lawyer. Interestingly too, as late as November of 2001 or even after almost three months from the filing of the illegal dismissal case, the names of Literal and Basay were still listed and included in respondents' payroll as can be gleaned in the Master Voucher covering the employees' payroll of November 12 to 16, 2001. While a voucher does not necessarily prove payment, it is an acceptable documentary record of a business transaction.[20] As such, entries made therein, being entered in the ordinary or regular course of business, enjoy the presumption of regularity.[21] Hence, on the basis of this material proof evincing respondents' intention to retain petitioners as employees, we are not convinced that petitioners were told to stop working or were prevented from working in the *hacienda*. This may well be an indication of respondents' lack of intention to dismiss petitioners from employment since they were still considered employees as of that time. Records are likewise

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[18] *Leopard Integrated Services, Inc. v. Macalinao*, G.R. No. 159808, September 30, 2008, 567 SCRA 192, 200.

[19] Annex "4" of respondents' Position Paper, *rollo*, p. 99.

[20] *Alonzo v. San Juan*, 491 Phil. 232, 244 (2005).

[21] See RULES OF COURT, Rule 130, Section 43.

bereft of any showing that to date, respondents had already terminated petitioners from employment.

We are not persuaded by petitioners' contention that nothing was presented to establish their intention of abandoning their work, or that the fact that they filed a complaint for illegal dismissal negates the theory of abandonment.

It bears emphasizing that this case does not involve termination of employment on the ground of abandonment. As earlier discussed, there is no evidence showing that petitioners were actually dismissed. Petitioners' filing of a complaint for illegal dismissal, irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether they have been illegally dismissed. All circumstances surrounding the alleged termination should also be taken into account.

In *Abad v. Roselle Cinema,*[22] we ruled that the substantial evidence proffered by the employer that it had not terminated the employee should not be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. We held that such *non sequitur* reasoning cannot take the place of the evidence of both the employer and the employee.

Given that there was no dismissal to speak of, there can be no question as to the legality or illegality thereof.

Basay and Literal are entitled to salary differentials for two years and proportionate 13th month pay from January 1-29, 2001. Abueva is not an employee, thus not entitled to his claims.

We agree with the petitioners that the issue on the admissibility of the Master Voucher, which does not show that they actually received the amount of salary indicated therein, was raised in their motion for reconsideration of the NLRC Decision dated

[22] G.R. No. 141371, March 24, 2006, 485 SCRA 262, 272.

March 22, 2004 where the labor tribunal ruled that petitioners were duly compensated for their work on the basis of such voucher. At any rate, even if its admission as evidence is not put into issue, still, the Master Voucher did not prove that petitioners were indeed paid the correct amount of wages.

A perusal of the Master Voucher shows that it covers the employees' payroll for the period of November 12-16, 2001 only. Clearly, the Master Voucher cannot constitute as proof that petitioners were duly paid for other periods not covered by such voucher. No other pertinent vouchers, payrolls, records or other similar documents have been presented as proof of payment of the correct amount of salaries paid, particularly, for the years 1998 and 1999. As a general rule, one who pleads payment has the burden of proving it.[23] Consequently, respondents failed to discharge the burden of proving payment thereby making them liable for petitioners' claim for salary differentials. We thus reinstate the Labor Arbiter's award of salary differentials for 1998 and 1999, computed at 6 months per year of service. However, the Labor Arbiter's computation must be modified pursuant to Wage Order No. ROVII-07. Under this wage order, the minimum wage rate of sugarcane plantation workers is at ₱130.00/day. The correct computation for the salary differentials due to Basay and Literal, who claimed to have received only ₱122.00 and ₱91.00 per day, respectively, should be as follows:

For ROMEO BASAY:

Basic Pay	=	₱130.00/day
Salary Received	=	₱122.00/day
Salary Differential	=	₱ 8.00/day

₱8.00/day x 312 days (for 1998 & 1999) = ₱2,496.00

For JULIAN LITERAL:

Basic Pay	=	₱130.00/day
Salary Received	=	₱ 91.00/day
Salary Differential	=	₱ 39.00/day

₱39.00/day x 312 days (for 1998 & 1999) = ₱12,168.00

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[23] *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 289 (2004).

As regards the 13th month pay, respondents were able to adduce evidence that the benefit was given to the employees for the years 1998, 1999, and 2000. However, for an employee who has been separated from service before the time for payment of the 13th month pay, he is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his separation.[24] The NLRC's award of proportionate 13th month pay computed from January 1, 2001 to August 29, 2001 in favor of Basay and Literal, is therefore proper.

As for petitioner Abueva, he is not entitled to his claims. The NLRC excluded Abueva in its judgment award, ruling that he is not an employee but a mere contractor. The existence of an employer-employee relationship is ultimately a question of fact.[25] Settled is the rule that only errors of law are generally reviewed by this Court.[26] Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the CA, must be accorded high respect, if not finality.[27]

The elements to determine the existence of an employment relationship are: (1) selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct.[28] In filing a complaint for illegal dismissal, it is incumbent upon Abueva to prove the relationship by substantial evidence.

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[24] *Mantle Trading Services, Inc. v. National Labor Relations Commission*, G.R. No. 166705, July 28, 2009.

[25] *Aklan v. San Miguel Corporation*, G.R. No. 168537, December 11, 2008, 573 SCRA 675, 685.

[26] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64.

[27] *V.V. Aldaba Engineering v. Ministry of Labor and Employment*, G.R. No. 76925, September 26, 1994, 237 SCRA 31, 38-39.

[28] *CRC Agricultural Trading v. National Labor Relations Commission*, G.R. No. 177664, December 23, 2009.

In this regard, petitioners claim that Abueva has worked with respondents for more than a year already and was allowed to stay inside the *hacienda*. As such, he is a regular employee entitled to monetary claims. However, petitioners have not presented competent proof that respondents engaged the services of Abueva; that respondents paid his wages or that respondents could dictate what his conduct should be while at work. In other words, Abueva's allegations did not establish that his relationship with respondents has the attributes of employer-employee on the basis of the above-mentioned four-fold test. Therefore, Abueva was not able to discharge the burden of proving the existence of an employer-employee relationship. Moreover, Abueva was not able to refute respondents' assertions that he hires other men to perform weeding job in the *hacienda* and that he is not exclusively working for respondents.

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 00313 dated June 7, 2006, finding petitioners Romeo Basay, Julian Literal and Julian Abueva not illegally dismissed and awarding petitioners Romeo Basay and Julian Literal their proportionate 13th month pay computed from January 1, 2001 to August 29, 2001, is *AFFIRMED* with *MODIFICATION* that the petitioners Romeo Basay and Julian Literal are entitled to receive the amounts of ₱2,496.00 and ₱12,168.00 as salary differentials, respectively.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 179935. April 19, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGELIO ASIS *y* LACSON,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ADDRESSED TO THE DISCRETION OF THE TRIAL JUDGE; CREDIBLE TESTIMONY OF THE VICTIM COULD BE THE SOLE BASIS OF CONVICTION.— In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect, because the judge has the opportunity to observe them on the stand and ascertain whether they are telling the truth or not. We have long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case. An accused could justifiably be convicted based solely on the credible testimony of the victim. At any rate, we perused the records of the case and we find nothing which would indicate that the trial court and the CA overlooked or failed to appreciate some facts which if considered would change the outcome of the case. Thus, we find the testimony of "AAA" sufficient to hold appellant guilty of two counts of rape. The testimony of "AAA" clearly established that on January 8, 1994, she was ravished by her own father. She succumbed to his lustful desires because appellant threatened to kill her if she refused.

2. ID.; ID.; APPELLANT'S DENIAL AND ALIBI DESERVE NO CONSIDERATION AT ALL.— Appellant's defense of alibi deserves no credence at all. He claimed that on January 8, 1994, he was working as a carpenter in Quezon City and only returned to Camarines Norte on January 17, 1994 to get his marriage license and to secure his NBI clearance. However, other than this self-serving allegation, the defense presented no other evidence to corroborate said claim. When asked to present any documentary proof to substantiate his claim, he claimed that he lost his identification card.

3. ID.; ID.; IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, DENIAL IS NEGATIVE AND SELF-SERVING EVIDENCE WHICH DESERVES NO WEIGHT IN LAW.— As regards the August 15, 1996 rape incident, appellant claimed that he attended the birthday party of his mother-in-law which was held in his house in Camarines Norte. He denied having raped his daughter and claimed that it was impossible for him to have raped "AAA" on said date considering that a number of people were in attendance during the party. We are not persuaded. We have held that "denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters." In this case, appellant's denial does not deserve any consideration given "AAA's" positive identification of appellant as her lecherous attacker.

4. CRIMINAL LAW; RAPE; MINORITY OF VICTIM WAS SATISFACTORILY ESTABLISHED; EXPRESS ADMISSION BY THE ACCUSED AS REGARDS THE AGE OF THE VICTIM WAS SUFFICIENT TO ESTABLISH HER MINORITY.— The Informations specifically alleged that "AAA" was a minor, *i.e.*, below 12 years old on January 8, 1994, and barely 14 years old on August 15, 1996, when she was raped by her own father. While the evidence of the prosecution consisted mainly of the victim's testimony, we find that the express admission by the accused as regards the age of the victim sufficient to establish her minority.

5. ID.; ID.; CONCURRENCE OF MINORITY AND RELATIONSHIP, SATISFACTORILY PROVED; PROPER IMPOSABLE PENALTY.— The rape incidents in this case were committed on January 8, 1994 and August 15, 1996. As such, the applicable provision is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 or the Death Penalty Law. Article 335 provides: ART. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman in under twelve years of age or is demented. The crime of rape shall be punished by *reclusion perpetua*. x x x The death penalty shall also be imposed if the crime of rape is committed with any of the

following circumstances: 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. x x x The prosecution satisfactorily proved the concurrence of minority and relationship. Thus, the proper imposable penalty would have been death. However, with the passage of Republic Act No. 9346 (An act Prohibiting the Imposition of Death Penalty), the appellate court correctly reduced the penalty to *reclusion perpetua*.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Once again, we are confronted with the repulsive situation where a father raped his minor daughter. In this case, "AAA"[1] was sexually molested not once but twice. Unfortunately, until this stage, her father did not manifest any feeling of remorse or sought forgiveness; instead, he insists on his innocence notwithstanding overwhelming evidence against him.

This is an appeal from the June 29, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 00961 which

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[1] Pursuant to Section 44 of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing RA 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

[2] CA *rollo*, pp. 87-100; penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman.

affirmed with modification the January 25, 2005 Decision[3] of the Regional Trial Court (RTC), Branch 64, Camarines Norte finding appellant Rogelio Asis *y* Lacson guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Factual Antecedents

On November 8, 1996, two Informations were filed charging appellant with two counts of rape committed against his own daughter, "AAA". The accusatory portions of the two Informations read as follows:

Crim. Case No. 96-0125:

That on or about January 8, 1994, and subsequently thereafter, at x x x, Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the moral ascendancy he exercises over the private complainant and by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously succeed in having sexual intercourse with his own daughter "AAA", a minor who at the time of the incident is below 12 years old, against the latter's will, to her damage and prejudice.

Contrary to law.[4]

Crim. Case No. 96-0126:

That on or about 3:00 o'clock in the afternoon of August 15, 1996, at x x x, Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the moral ascendancy he exercises over the private complainant and by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously succeed in having sexual intercourse with his own daughter "AAA", a minor barely 14 years old, against the latter's will, to her damage and prejudice.

Contrary to law.[5]

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[3] *Id.* at 2140-223; penned by Judge Franco T. Falcon.

[4] Records, p. 2.

[5] *Id.* at 9.

During the arraignment on December 4, 1996, the appellant pleaded "not guilty." Trial on the merits ensued thereafter.

Version of the Prosecution

The prosecution presented the offended party "AAA" as its first witness. She testified that on January 8, 1994, while her brother was out with their neighbors and while her mother was doing laundry, she was left alone in their house with her father, herein appellant.[6] The appellant then ordered her to undress. At first, "AAA" tried to resist but she subsequently succumbed to appellant's orders when the latter threatened to kill her if she refused.[7] The appellant then removed his shorts and briefs and ordered "AAA" to lie down on the floor. Appellant thereafter went on top of "AAA", separated her legs and forcibly inserted his penis into his daughter's vagina and succeeded in having carnal knowledge of her. After satisfying himself, appellant threatened to kill "AAA" if she would disclose the incident to anyone.

"AAA" further testified that appellant again raped her on August 15, 1996. Appellant pulled her to a grassy portion near their house and ordered her to remove her clothes. She followed his orders because he threatened to kill her if she refused.[8] After telling her to lie down on the ground, appellant took two pieces of stones, separated her legs, and placed them on top of the stones. He then inserted his penis into her vagina. It was so painful for "AAA" that she asked her father why he was doing this to her. Appellant answered that before anybody will benefit from her, he will be the one to do it first.[9]

The prosecution presented "BBB", the brother of "AAA", as its second witness. "BBB" testified that on January 8, 1994,

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[6] *Id.* at 10.

[7] *Id.*

[8] *Id.*

[9] *Id.*

he saw his father, the appellant, undressing "AAA".[10] Appellant was already fully naked when he ordered "AAA" to lie down on the ground. "BBB" claimed that he saw his father rape his sister but he did not reveal to anyone what he saw because he was scared of his father who was always carrying a bolo.[11]

On cross-examination, "BBB" testified that he witnessed his father rape his sister "AAA" on two occasions.[12] However, he did not report the incidents to anyone for fear of what his father might do to him.

The prosecution next presented Dr. Marcelito B. Abas. He testified that he conducted a genital examination on "AAA" and found several hymenal lacerations in the following positions: 3, 5, 6, and 12 o'clock positions.[13] He then concluded that the hymenal lacerations were caused by sexual intercourse and that "AAA" is no longer a virgin.

Version of the Defense

The defense presented the appellant as its lone witness. Appellant denied the charges against him and claimed that on January 8, 1994, he was in Quezon City working as a carpenter at Josefa Corporation.[14] According to the appellant, he worked in the said corporation for six months or up to June 1994, although he returned home on January 17, 1994 to get his marriage license and to secure his NBI clearance.[15] Thus, he claimed that he could not have raped his daughter "AAA" on January 8, 1994.

Appellant also denied raping "AAA" on August 15, 1996. He claimed that on said date, he was at his house celebrating

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[10] *Id.* at 11.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 199.

[14] *Id.* at 148-149.

[15] *Id.* at 149.

the birthday of his mother-in-law.[16] He claimed that during the party, his daughter "AAA" was in the house of her aunt which was located within the same neighborhood as appellant's house.[17]

Appellant also claimed that "AAA" harbored ill-feelings against him hence, she filed the rape charges. He alleged that he scolded "AAA" and did not allow her to work in Manila as a helper.[18] When "AAA" insisted on working in Manila, he whipped her with a broom causing her legs to bleed.

Ruling of the Regional Trial Court

The trial court found the appellant guilty beyond reasonable doubt of two counts of rape and sentenced him to suffer the penalty of death.

The trial court rejected appellant's alibi for being self-serving and for lack of any evidence supporting said claim.[19] It held that appellant's denial and alibi deserve no credence at all considering the testimony of "AAA" positively identifying the appellant as the perpetrator of the crime. It also noted that "AAA" was not ill-motivated when she filed the charges against her own father.[20]

The dispositive portion of the Decision of the trial court reads:

WHEREFORE, judgment is hereby rendered finding accused ROGELIO ASIS *Y* LACSON GUILTY beyond reasonable doubt of the crime of rape for two (2) counts as charged and defined and penalized under Article 335 of the Revised Penal Code as amended in relation to Section 11 of Republic Act No. 7659 (Death Penalty Law) and accordingly, sentencing him to suffer the capital punishment of death in each two (2) separate crimes of rape committed on January 8, 1994 and August 15, 1996 respectively. To pay the victim the amount of ₱75,000.00 each for [the] separate crime of rape or

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[16] *Id.* at 152-153.

[17] *Id.* at 151.

[18] *Id.* at 153.

[19] CA *rollo,* p. 16.

[20] *Id.* at 17.

for a total of ₱150,000.00 as civil indemnity; ₱100,000.00 as moral damages for two (2) counts; ₱50,000.00 as exemplary damages for two (2) counts and to pay the costs.

SO ORDERED.[21]

Ruling of the Court of Appeals

On appeal, the appellate court affirmed with modification the Decision of the trial court. It held that the victim's testimony clearly showed that the appellant had sexual intercourse with her on January 8, 1994, and on August 15, 1996. The CA held that the evidence presented by the prosecution specially that of "AAA" was clear, steadfast, and convincing.

Regarding the appellant's argument that the prosecution failed to prove the age of "AAA", the appellate court ruled that:

> x x x Latest jurisprudence, however, also pronounced that the presentation of the birth certificate or any other official document is no longer necessary to prove minority. Thus, in this case, where the age of the victim was never put in doubt, except on appeal, and was in fact sufficiently established, there is no corresponding obligation on the part of the prosecution to present other evidence since the testimony of the victim, who is competent to testify, is sufficient to prove her age. The presentation of the birth certificate would merely be corroborative. x x x[22]

Our Ruling

We **AFFIRM** with **MODIFICATIONS** the Decision of the CA.

Findings of the trial court on the credibility of witnesses and their testimonies are accorded great weight and respect.

The trial court found the testimony of "AAA" to be clear, steadfast, and credible. Thus:

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[21] *Id.* at 17-18.

[22] *Id.* at 98.

After a careful scrutiny of the evidence adduced by both the prosecution and the defense and the testimonies of their respective witnesses, this Court finds more for the prosecution convincing and worthy of belief.

From the detailed testimony of the private complainant "AAA" (who was only 12 and 14 years old at the time of the incident) the Court is inclined to believe that the incident of rape actually [transpired] x x x. "AAA" has also no reason to concoct false stories just to implicate this serious offense to [her] own father x x x.[23]

The CA affirmed the said findings, holding thus:

x x x After a perusal of the records of the case, we are convinced that the trial court did not err in giving credence to the testimonies of the victim and the other prosecution witnesses. The testimony of the victim, detailing how she was abused by the accused-appellant, on two separate occasions, was clear, steadfast, and convincing. x x x[24]

We find no reason to deviate from the said findings. In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect, because the judge has the opportunity to observe them on the stand and ascertain whether they are telling the truth or not.[25] We have long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case.[26]

An accused could justifiably be convicted based solely on the credible testimony of the victim. At any rate, we perused the records of the case and we find nothing which would indicate that the trial court and the CA overlooked or failed to appreciate some facts which if considered would change the outcome of

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[23] Records, pp. 218-219.

[24] CA *rollo*, p. 91.

[25] *People v. Manalili*, G.R. No. 184598, June 23, 2009.

[26] *Id.*

the case. Thus, we find the testimony of "AAA" sufficient to hold appellant guilty of two counts of rape.

The testimony of "AAA" clearly established that on January 8, 1994, she was ravished by her own father. She succumbed to his lustful desires because appellant threatened to kill her if she refused. "AAA" thus testified in her direct examination, *viz:*

Prosecutor Pante:

Q: While you and your father was in your house sometime on January 8, 1994 do you remember any extra ordinary thing that happened to you?
A: There was, sir.

Q: What was that incident all about?
A: Sometime on January 8, 1994, I was sexually molested by my father x x x

x x x x x x x x x

Q: How did your father sexually abuse you that noon of January 8, 1994?
A: At noontime, he tried to lay me down but I resisted, sir.

Q: What happened [when you tried to resist]?
A: He told me that I will be killed x x x, sir.

x x x x x x x x x

Q: After[your father removed his short and briefs] and while he was on top of you what did he do to you?
A: He was kissing me sir, and was placing his organ into my organ, sir.

x x x x x x x x x

Q: Now, why did you not report [the incident] to your mother or [to] any [of your] relative?
A: [He] threatened to [kill me,] sir.[27]

As regards the rape incident on August 15, 1996, "AAA" testified thus:

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[27] TSN, April, 14, 1997, pp. 11-17.

Prosecutor Pante:

Q: Sometime on August 15, 1996 at about 3:00 in the afternoon while you were in your house in x x x, Camarines Norte is there anything that happened to you?
A: There was, sir.

Q: What was the incident all about?
A: I was raped by my father x x x, sir.

x x x x x x x x x

Q: After you were totally naked what happened next?
A: He went on top of me and put his organ [in my vagina], sir.

x x x x x x x x x

Q: Will you kindly tell the court how [his] penis [was] able to penetrate your vagina?
A: He just placed it inside, sir.[28]

Appellant's denial and alibi deserve no consideration at all.

Appellant's defense of alibi deserves no credence at all. He claimed that on January 8, 1994, he was working as a carpenter in Quezon City and only returned to Camarines Norte on January 17, 1994 to get his marriage license and to secure his NBI clearance. However, other than this self-serving allegation, the defense presented no other evidence to corroborate said claim. When asked to present any documentary proof to substantiate his claim, he claimed that he lost his identification card.

As regards the August 15, 1996 rape incident, appellant claimed that he attended the birthday party of his mother-in-law which was held in his house in Camarines Norte. He denied having raped his daughter and claimed that it was impossible for him to have raped "AAA" on said date considering that a number of people were in attendance during the party.

We are not persuaded. We have held that "denial, if unsubstantiated by clear and convincing evidence, is negative

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[28] *Id.* at 18-21.

and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters."[29] In this case, appellant's denial does not deserve any consideration given "AAA's" positive identification of appellant as her lecherous attacker.

We are likewise not swayed by appellant's assertion that "AAA" filed the rape charges against him because he disallowed her to work in Manila. This claim is not only unsubstantiated, but likewise unworthy of belief. As aptly held by the trial court, it strains credulity that the victim would concoct a tale of rape against her own father, allow an examination of her private parts and subject herself to a public trial simply because she was not allowed to work in Manila. We have consistently held that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[30]

The minority of the victim was satisfactorily established.

The Informations specifically alleged that "AAA" was a minor, *i.e.*, below 12 years old on January 8, 1994, and barely 14 years old on August 15, 1996, when she was raped by her own father. While the evidence of the prosecution consisted mainly of the victim's testimony, we find that the express admission by the accused as regards the age of the victim sufficient to establish her minority.

We quote the testimony of appellant, *viz*:

Prosecutor Velarde:

Q: You will admit that on January 8, 1994, your daughter "AAA," who is the complainant in this case was only 11 years old going to 12, isn't it?
A: Yes.

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[29] *Id*.

[30] *People v. Ruales*, 457 Phil. 160, 172 (2003).

Q: In fact she was in grade 6, isn't it?
A: Yes.[31]

At this juncture, we deem it proper to reiterate the guidelines set forth in *People v. Pruna*[32] in appreciating the age, either as an element of the crime or as a qualifying circumstance, *viz:*

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

   a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

   b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

   c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. **In the absence of a certificate of live birth, authentic document or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.** (Emphasis supplied)

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

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[31] TSN, September 8, 1999, p. 25.

[32] 439 Phil. 440, 470 (2002).

6. The trial court should always make a categorical finding as to the age of the victim.

The rape incidents in this case were committed on January 8, 1994 and August 15, 1996. As such, the applicable provision is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 or the Death Penalty Law.[33] Article 335 provides:

ART. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman in under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x x x x x x

The prosecution satisfactorily proved the concurrence of minority and relationship. Thus, the proper imposable penalty would have been death. However, with the passage of Republic Act No. 9346 (An act Prohibiting the Imposition of Death Penalty), the appellate court correctly reduced the penalty to *reclusion perpetua*.

As regards the damages, we find that the appellate court correctly awarded the amounts of ₱75,000.00 as civil indemnity and another ₱75,000.00 as moral damages for each count of

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[33] See *People v. Manalili, supra* note 25.

rape, pursuant to prevailing jurisprudence.[34] However, the award of exemplary damages must be increased from ₱25,000.00 to ₱30,000.00.[35]

Finally, appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

WHEREFORE, the June 29, 2007 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00961 finding appellant Rogelio Asis *y* Lacson guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay "AAA" the amounts ₱75,000.00 as civil indemnity and another ₱75,000.00 as moral damages, for each count, is *AFFIRMED* with *MODIFICATIONS* that the award of exemplary damages is increased to ₱30,000.00, for each count of rape. Appellant is likewise held not eligible for parole.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 184971. April 19, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **MONET'S EXPORT AND MANUFACTURING CORP., VICENTE V. TAGLE, SR. and MA. CONSUELO G. TAGLE,** *respondents.*

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[34] *People v. Sarcia,* G.R. No. 169641, September 10, 2009.

[35] *Id.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; ENTRIES IN THE COURSE OF BUSINESS; *PRIMA FACIE* EVIDENCE OF THE TRUTH OF WHAT THEY STATE; A BANK STATEMENT, PROPERLY AUTHENTICATED BY A COMPETENT BANK OFFICER, CAN SERVE AS EVIDENCE OF THE STATUS OF THE ACCOUNT.— The CA of course places no value on the Consolidated Billing Statement that Land Bank would have adduced in evidence had the RTC granted its motion for reconsideration and reopened the hearing. Apparently, both courts believe that Land Bank needed to present in evidence all original documents evidencing every transaction between Land Bank and Monet to prove the current status of the latter's loan accounts. But a bank statement, properly authenticated by a competent bank officer, can serve as evidence of the status of those accounts and what Monet and the Tagles still owe the bank. Under Section 43, Rule 130 of the Rules of Court, entries prepared in the regular course of business are *prima facie* evidence of the truth of what they state. The billing statement reconciles the transaction entries entered in the bank records in the regular course of business and shows the net result of such transactions. Entries in the course of business are accorded unusual reliability because their regularity and continuity are calculated to discipline record keepers in the habit of precision. If the entries are financial, the records are routinely balanced and audited. In actual experience, the whole of the business world function in reliance of such kind of records.

2. ID.; ID.; ID.; ID.; HOW WILL A BANK PROVE IN COURT THAT A BORROWER STILL OWES IT A CERTAIN AMOUNT PLUS INTEREST; ILLUSTRATION.— Consider a borrower who takes out a loan of ₱10,000.00 from a bank and executes a promissory note providing for interests, charges, and penalties and an undertaking to pay the loan in 10 monthly installments of ₱1,000.00. If he pays the first five months installments but defaults in the rest, how will the bank prove in court that the debtor still owes it ₱5,000.00 plus interest? The bank will of course present the promissory note to establish the scope of the debtor's primary obligations and a computation of interests, charges, and penalties based on its terms. It must then show by the entries in its record how much it had actually

been paid. This will in turn establish how much the borrower still owes it. The bank does not have to present all the receipts of payment it issued to all its clients during the entire year, thousands of them, merely to establish the fact that only five of them, rather than ten, pertains to the borrower. The original documents need not be presented in evidence when it is numerous, cannot be examined in court without great loss of time, and the fact sought to be established from them is only the general result.

3. ID.; ID.; ID.; ID.; THE BANK'S BILLING STATEMENTS MAY BE DISPUTED BY PROOF THAT THE BANK EXAGGERATED WHAT WAS OWED IT AND THAT THE BORROWER OR DEBTOR HAD MADE MORE PAYMENTS THAN WERE REFLECTED IN THE STATEMENTS.— Monet and the Tagles can of course dispute the bank's billing statements by proof that the bank had exaggerated what was owed it and that Monet had made more payments than were reflected in those statements. They can do this by presenting evidence of those greater payments. Notably, Monet and the Tagles have consistently avoided stating in their letters to the bank how much they still owed it. But, ultimately, it is as much their obligation to prove this disputed point if they deny the bank's statements of their loan accounts.

4. ID.; ID.; ID.; ID.; THE TRIAL COURT AND APPELLATE COURT ERRED IN RULING THAT A REOPENING OF THE HEARING WOULD SERVE NO USEFUL PURPOSE; THE BANK'S MOTION FOR RECONSIDERATION, ASKING FOR AN OPPORTUNITY TO PRESENT EVIDENCE OF THE STATUS OF THE LOANS, OPENED UP A CHANCE FOR THE TRIAL COURT TO ABIDE BY WHAT THE COURT REQUIRED OF IT.— In reverting back to Exhibit 39, which covers just one of many promissory notes that Monet and the Tagles executed in favor of Land Bank, the RTC and the CA have shown an unjustified obstinacy and a lack of understanding of what the Court wanted done to clear up the issue of how much Monet and the Tagles still owed the bank. The bank lawyer who claimed that Land Bank had no further evidence to present during the hearing was of course in error and it probably warranted a dismissal of the bank's claim for failure to prosecute. But the bank's motion for reconsideration, asking for an opportunity to present evidence

of the status of the loans, opened up a chance for the RTC to abide by what the Court required of it. It committed error, together with the CA, in ruling that a reopening of the hearing would serve no useful purpose.

APPEARANCES OF COUNSEL

Legal Services Group Litigation Department (LBP) for petitioner.

Dario Reyes Hocson & Viado for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the evidence required to prove how much a borrower still owes the bank when he has multiple loan accounts with it that had all fallen due.

The Facts and the Case

On June 25, 1981 petitioner Land Bank of the Philippines (Land Bank) and respondent Monet's Export and Manufacturing Corporation (Monet) executed an Export Packing Credit Line Agreement (Agreement) under which the bank gave Monet a credit line of ₱250,000.00, secured by the proceeds of its export letters of credit, promissory notes, a continuing guaranty executed by respondent spouses Vicente V. Tagle, Sr. and Ma. Consuelo G. Tagle (the Tagles), and a third-party mortgage executed by one Pepita C. Mendigoria. Land Bank renewed and amended this credit line agreement several times until it reached a ceiling of ₱5 million.

Land Bank claims that by August 31, 1992 Monet's obligation under the Agreement had swelled to ₱11,464,246.19. Since Monet failed to pay despite demands, the bank filed a collection suit against Monet and the Tagles before the Regional Trial Court (RTC) of Manila.[1] In their answer, Monet and the Tagles

[1] Docketed with its Branch 49 as Civil Case 93-64350.

claimed that Land Bank had refused to collect the US$33,434.00 receivables on Monet's export letter of credit against Wishbone Trading Company of Hong Kong while making an unauthorized payment of US$38,768.40 on its import letter of credit to Beautilike (H.K.) Ltd. This damaged Monet's business interests since it ran short of funds to carry on with its usual business. In other words, Land Bank mismanaged its client's affairs under the Agreement.

After trial or on July 15, 1997 the RTC rendered a decision[2] that, among other things, recognized Monet and the Tagles' obligations to Land Bank in the amount reflected in Exhibit 39, the bank's Schedule of Amortization from its Loans and Discount Department, but sans any penalty. The RTC ordered petitioners to pay Land Bank the same.

On appeal to the Court of Appeals (CA),[3] the latter rendered judgment on October 9, 2003, affirming the RTC decision.[4] Land Bank filed a petition for review with this Court[5] and on March 10, 2005 the Court rendered a Decision[6] that, among other things, remanded the case to the RTC for the reception of additional evidence. The pertinent portion reads:

Insofar as the amount of indebtedness of the respondents [Monet and the Tagles] to the petitioner [Land Bank] is concerned, the October 9, 2003 decision and the January 20, 2004 resolution of the Court of Appeals in CA-G.R. CV No. 57436, are SET ASIDE. The case is hereby remanded to its court of origin, the Regional Trial Court of Manila, Branch 49, for the reception of additional evidence as may be needed to determine

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[2] *Rollo*, pp. 67-75.

[3] Docketed as CA-G.R. CV 57436.

[4] *Rollo*, pp. 77-83. Penned by Associate Justice Sergio L. Pestaño, and concurred in by Associate Justices Marina L. Buzon and Jose C. Mendoza.

[5] Docketed as G.R. 161865.

[6] *Rollo*, pp. 85-99. Penned by First Division Associate Justice Consuelo Ynares-Santiago (ret.), and concurred in by then Chief Justice Hilario G. Davide, Jr. (ret.) and Associate Justices Leonardo A. Quisumbing (ret.), Antonio T. Carpio, and Adolfo S. Azcuna (ret.). Cited in 453 SCRA 173.

the actual amount of indebtedness of the respondents to the petitioner. x x x

In remanding the case, the Court noted that Exhibit 39, the Summary of Availment and Schedule of Amortization, on which both the RTC and the CA relied, covered only Monet's debt of ₱2.5 million under Promissory Note P-981, a small amount compared to the ₱11,464,246.19 that Land Bank sought to collect from it. The records showed, however, that Monet executed not only one but several promissory notes in varying amounts in favor of the bank. Indeed, the bank submitted a Consolidated Statement of Account dated August 31, 1992 in support of its claim of ₱11,464,246.19 but both the RTC and the CA merely glossed over it. Land Bank also submitted a Summary of Availments and Payments from 1981 to 1989 that detailed the series of availments and payments Monet made.

The Court explained its reason for remanding the case for reception of additional evidence, thus:

Unfortunately, despite the pieces of evidence submitted by the parties, our review of the same is inconclusive in determining the total amount due to the petitioner. The petitioner had failed to establish the effect of Monet's Exhibit "39" to its own Consolidated Statement of Account as of August 31, 1992, nor did the respondents categorically refute the said statement of account *vis-à-vis* its Exhibit "39". The interest of justice will best be served if this case be remanded to the court of origin for the purpose of determining the amount due to petitioner. The dearth in the records of sufficient evidence with which we can utilize in making a categorical ruling on the amount of indebtedness due to the petitioner constrains us to remand this case to the trial court with instructions to receive additional evidence as needed in order to fully thresh out the issue and establish the rights and obligations of the parties. From the amount ultimately determined by the trial court as the outstanding obligation of the respondents to the petitioner, will be deducted the award of opportunity losses granted to the respondents in the amount of US$15,000.00 payable in Philippine pesos at the official exchange rate when payment is to be made.[7]

[7] *Id.* at 95-97.

On remand, the RTC held one hearing on October 30, 2006, at which the lawyer of Land Bank told the court that, apart from what the bank already adduced in evidence, it had no additional documents to present. Based on this, the RTC issued an order on the same day,[8] affirming its original decision of July 15, 1997. The pertinent portion of the order reads:

At today's hearing of this case, the lawyer for Land Bank stated on record that he has no more documents to present. Therefore, the obligation of the defendants would be those stated in the schedule of amortization from the Loans & Discount Department of the Land Bank (Exhibit "39") as well as the interest mentioned therein, as provided in the Decision of this Court. From the said obligation shall be deducted in favor of the defendants the REDUCED amount of US$15,000.00 representing the award of opportunity losses, as determined by the Supreme Court, payable in Philippine Pesos at the official exchange rate when payment is to be made.[9]

In effect, the RTC stood by Exhibit 39 as the basis of its finding that Monet and the Tagles owed Land Bank only ₱2.5 million as opposed to the latter's claim of ₱11,464,246.19. Effectively, the RTC reinstated the portion of its July 15, 1997 decision that the Court struck down with finality in G.R. 161865 as baseless for determining the amount due the bank.

Land Bank filed a motion for reconsideration, actually a motion to reopen the hearing, to enable it to adduce in evidence a Consolidated Billing Statement as of October 31, 2006 to show how much Monet and the Tagles still owed the bank. But the trial court denied the motion. Land Bank appealed the order to the CA[10] but the latter rendered a decision on May 30, 2008,[11]

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[8] *Id.* at 100.

[9] *Id.*

[10] Docketed as CA-G.R. CV 88782.

[11] *Rollo*, pp. 46-58. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid.

affirming the RTC orders.[12] Land Bank moved for reconsideration, but the CA denied it in its October 10, 2008 resolution,[13] hence, the present petition by Land Bank.

Issue Presented

The sole issue presented in this case is whether or not the RTC and the CA acted correctly in denying petitioner Land Bank's motion to reopen the hearing to allow it to present the bank's updated Consolidated Billing Statement as of October 31, 2006 that reflects respondents Monet and the Tagles' remaining indebtedness to it.

The Court's Ruling

The CA conceded that the RTC needed to receive evidence that would enable it to establish Monet's actual indebtedness to Land Bank in compliance with the Court's decision in G.R. 161865. But since Land Bank, which had the burden of proving the amount of that indebtedness, told the RTC, when it set the matter for hearing, that it had no further documentary evidence to present, it was but right for that court to issue its assailed order of October 30, 2006, which reiterated its original decision of July 15, 1997.

The CA also held that the RTC did right in denying Land Bank's motion to reopen the hearing to allow it to present its Consolidated Billing Statement as of October 31, 2006 involving Monet's loans. Such billing statement, said the CA, did not constitute sufficient evidence to prove Monet's total indebtedness for the simple reason that this Court in G.R. 161865 regarded a prior Consolidated Statement of Account for 1992 insufficient for that purpose.

But what the RTC and the CA did not realize is that the original RTC decision of July 15, 1997 was an incomplete decision

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[12] *Id.* at 58.

[13] *Id.* at 60-62. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Hakim S. Abdulwahid and Arcangelita M. Romilla-Lontok.

since it failed to resolve the main issue that the collection suit presented: how much Monet and the Tagles exactly owed Land Bank. As the Court noted in its decision in G.R. 161865, the evidence then on record showed that the credit line Land Bank extended to Monet began at ₱250,000.00 but, after several amendments, eventually rose up to ₱5 million. Monet availed itself of these credit lines by taking out various loans evidenced by individual promissory notes that had diverse terms of payment.

As it happened, however, in its original decision, the RTC held that Monet still owed Land Bank only ₱2.5 million as reported in the bank's Schedule of Amortization (Exhibit 39). But that schedule covered only one promissory note, Promissory Note P-981. Noting this, the Court rejected Exhibit 39 as basis for determining Monet's total obligation, given that it undeniably took out more loans as evidenced by the other promissory notes it executed in favor of Land Bank.

And, although the bank presented at the trial its Consolidated Statement of Account for 1992 covering Monet's loans, the Court needed to know how the balance of ₱2.5 million in Exhibit 39, dated April 29, 1991, which the RTC regarded as true and correct, impacted on that consolidated statement that the bank prepared a year later. The Court thus remanded the case so the RTC can receive evidence that would show, after reconciliation of all of Monet's loan accounts, exactly how much more it owed Land Bank.

The CA of course places no value on the Consolidated Billing Statement that Land Bank would have adduced in evidence had the RTC granted its motion for reconsideration and reopened the hearing. Apparently, both courts believe that Land Bank needed to present in evidence all original documents evidencing every transaction between Land Bank and Monet to prove the current status of the latter's loan accounts. But a bank statement, properly authenticated by a competent bank officer, can serve as evidence of the status of those accounts and what Monet and the Tagles still owe the bank. Under

Section 43, Rule 130[14] of the Rules of Court, entries prepared in the regular course of business are *prima facie* evidence of the truth of what they state. The billing statement reconciles the transaction entries entered in the bank records in the regular course of business and shows the net result of such transactions.

Entries in the course of business are accorded unusual reliability because their regularity and continuity are calculated to discipline record keepers in the habit of precision. If the entries are financial, the records are routinely balanced and audited. In actual experience, the whole of the business world function in reliance of such kind of records.[15]

Parenthetically, consider a borrower who takes out a loan of ₱10,000.00 from a bank and executes a promissory note providing for interests, charges, and penalties and an undertaking to pay the loan in 10 monthly installments of ₱1,000.00. If he pays the first five months installments but defaults in the rest, how will the bank prove in court that the debtor still owes it ₱5,000.00 plus interest?

The bank will of course present the promissory note to establish the scope of the debtor's primary obligations and a computation of interests, charges, and penalties based on its terms. It must then show by the entries in its record how much it had actually been paid. This will in turn establish how much the borrower still owes it. The bank does not have to present all the receipts of payment it issued to all its clients during the entire year, thousands of them, merely to establish the fact that only five of them, rather than ten, pertains to the borrower. The original documents need not be presented in evidence when it is numerous, cannot be examined in court without great loss of time, and the

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[14] Sec. 43. *Entries in the course of business*. — Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

[15] Sec. 286, McCormick, Fourth Edition.

fact sought to be established from them is only the general result.[16]

Monet and the Tagles can of course dispute the bank's billing statements by proof that the bank had exaggerated what was owed it and that Monet had made more payments than were reflected in those statements. They can do this by presenting evidence of those greater payments. Notably, Monet and the Tagles have consistently avoided stating in their letters to the bank how much they still owed it. But, ultimately, it is as much their obligation to prove this disputed point if they deny the bank's statements of their loan accounts.

In reverting back to Exhibit 39, which covers just one of many promissory notes that Monet and the Tagles executed in favor of Land Bank, the RTC and the CA have shown an unjustified obstinacy and a lack of understanding of what the Court wanted done to clear up the issue of how much Monet and the Tagles still owed the bank. The bank lawyer who claimed that Land Bank had no further evidence to present during the hearing was of course in error and it probably warranted a dismissal of the bank's claim for failure to prosecute. But the bank's motion for reconsideration, asking for an opportunity to present evidence of the status of the loans, opened up a chance for the RTC to abide by what the Court required of it. It committed error, together with the CA, in ruling that a reopening of the hearing would serve no useful purpose.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the Court of Appeals decision in CA-G.R. CV 88782 dated May 30, 2008 and resolution dated October 10, 2008 and the Regional Trial Court order in Civil Case 93-64350 dated October 30, 2006, *REMANDS* the case to the same Regional Trial Court of Manila for the reception of such evidence as may be needed to determine the actual amount of indebtedness of respondents Monet's Export and Manufacturing Corp. and the spouses Vicente V. Tagle, Sr. and Ma. Consuelo G. Tagle

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[16] RULES OF COURT, Rule 130, Section 3.

and adjudicate petitioner Land Bank of the Philippines' claims as such evidence may warrant.

SO ORDERED.

Carpio (Chairperson), Brion, Del Castillo, and *Perez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 149121. April 20, 2010]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **AUGUSTO BASA, JR., LUZ BASA and EDUARDO S. BASA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; CONTENTS OF PETITION; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— In its petition, NHA attached the February 24, 2000 Decision, the November 27, 2000 Amended Decision, and the July 19, 2001 Resolution all of the Court of Appeals; copies of the transfer certificates of title of the disputed properties; and the June 13, 1994 Order of the Quezon City RTC ordering the reconstitution of the said titles. This Court finds that NHA substantially complied with the requirements under Section 4 of Rule 45. The same conclusion was arrived at by this Court in *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd.* when it was faced with the same procedural objection.

2. ID.; ID.; VERIFICATION; REASON FOR REQUIREMENT.— The reason for requiring verification in the petition is to secure

an assurance that the allegations of a pleading are true and correct; are not speculative or merely imagined; and have been made in good faith. To achieve this purpose, the verification of a pleading is made through an affidavit or sworn statement confirming that the affiant has read the pleading whose allegations are true and correct of the affiant's personal knowledge or based on authentic records.

3. ID.; ID.; THE ADDITION OF THE WORDS "TO THE BEST" BEFORE THE PHRASE "OF MY PERSONAL KNOWLEDGE" DID NOT VIOLATE THE REQUIREMENT OF SECTION 4 OF RULE 7, IT BEING SUFFICIENT THAT THE AFFIANT DECLARED THAT THE ALLEGATION IN THE PETITION ARE TRUE AND CORRECT BASED ON HIS PERSONAL KNOWLEDGE.— The General Manager of NHA verified the petition as follows: 3. I have read the allegations contained therein and that the same are true and correct to the best of my own personal knowledge. A reading of the above verification reveals nothing objectionable about it. The affiant confirmed that he had read the allegations in the petition which were true and correct based on his personal knowledge. The addition of the words "to the best" before the phrase "of my personal knowledge" did not violate the requirement under Section 4 of Rule 7, it being sufficient that the affiant declared that the allegations in the petition are true and correct based on his personal knowledge.

4. CIVIL LAW; LAND REGISTRATION; THERE IS EFFECTIVE REGISTRATION ONCE THE REGISTRANT HAS FULFILLED ALL THAT IS NEEDED OF HIM FOR PURPOSES OF ENTRY AND ANNOTATION, SO THAT WHAT IS LEFT TO BE ACCOMPLISHED LIES SOLELY ON THE REGISTER OF DEEDS.—[T]he prevailing rule is that there is effective registration once the registrant has fulfilled all that is needed of him for purposes of entry and annotation, so that what is left to be accomplished lies solely on the register of deeds. The Court thus once held: Current doctrine thus seems to be that entry alone produces the effect of registration, whether the transaction entered is a voluntary or an involuntary one, so long as the registrant has complied with all that is required of him for purposes of entry and annotation, and nothing more remains to be done but a duty

incumbent solely on the register of deeds. In the case under consideration, NHA presented the sheriff's certificate of sale to the Register of Deeds and the same was entered as Entry No. 2873 and said entry was further annotated in the owner's transfer certificate of title. A year later and after the mortgagors did not redeem the said properties, respondents filed with the Register of Deeds an Affidavit of Consolidation of Ownership after which the same instrument was presumably entered into in the day book as the same was annotated in the owner's duplicate copy. Just like in *DBP*, *Levin*, *Potenciano* and *Autocorp*, NHA followed the procedure in order to have its sheriff's certificate of sale annotated in the transfer certificates of title. There would be, therefore, no reason not to apply the ruling in said cases to this one. It was not NHA's fault that the certificate of sale was not annotated on the transfer certificates of title which were supposed to be in the custody of the Registrar, since the same were burned. Neither could NHA be blamed for the fact that there were no reconstituted titles available during the time of inscription as it had taken the necessary steps in having the same reconstituted as early as July 15, 1988. NHA did everything within its power to assert its right.

5. ID.; ID.; ENTRY IN THE PRIMARY BOOK PRODUCES THE EFFECT OF REGISTRATION.— While it may be true that, in *DBP,* the Court ruled that "in the particular situation here obtaining, annotation of the disputed entry on the reconstituted originals of the certificates of title to which it refers is entirely proper and justified," this does not mean, as respondents insist, that the ruling therein applies exclusively to the factual milieu and the issue obtaining in said case, and not to similar cases. There is nothing in the subject declaration that categorically states its *pro hac vice* character. For in truth, what the said statement really conveys is that the current doctrine that entry in the primary book produces the effect of registration can be applied in the situation obtaining in that case since the registrant therein complied with all that was required of it, hence, it was fairly reasonable that its acts be given the effect of registration, just as the Court did in the past cases. In fact the Court there continued with this pronouncement: To hold said entry ineffective, as does the appealed resolution, amounts to declaring that it did not, and does not, protect the registrant (DBP) from claims arising, or transactions made, thereafter

which are adverse to or in derogation of the rights created or conveyed by the transaction thus entered. That, surely, is a result that is neither just nor can, by any reasonable interpretation of Section 56 of Presidential Decree No. 1529 be asserted as warranted by its terms.

6. ID.; ID.; NON-APPLICATION OF PERTINENT RULINGS OF THE COURT TO OTHER CASES, ABSENT ANY STATEMENT THEREOF TO SUCH EFFECT, CONTRAVENES THE PRINCIPLE OF *STARE DECISIS* WHICH URGES THAT ALL COURTS ARE TO APPLY PRINCIPLES DECLARED IN PRIOR DECISIONS THAT ARE SUBSTANTIALLY SIMILAR TO A PENDING CASE.— [I]n *Autocorp Group v. Court of Appeals,* the pertinent *DBP* ruling was applied, thereby demonstrating that the said ruling in *DBP* may be applied to other cases with similar factual and legal issues, *viz*: Petitioners contend that the aforecited case of DBP is not apropos to the case at bar. Allegedly, in DBP, the bank not only paid the registration fees but also presented the owner's duplicate certificate of title. We find no merit in petitioner's posture x x x. Like in *DBP v. Acting Register of Deeds of Nueva Ecija,* the instrument involved in the case at bar, is a sheriff's certificate of sale, We hold now, as we held therein, that the registrant is under no necessity to present the owner's duplicates of the certificates of title affected, for purposes of primary entry, as the transaction sought to be recorded is an involuntary transaction. x x x Such entry is equivalent to registration. Injunction would not lie anymore, as the act sought to be enjoined had already become a *fait accompli* or an accomplished act. Moreover, respondents' stand on the non-applicability of the *DBP* case to other cases, absent any statement thereof to such effect, contravenes the principle of *stare decisis* which urges that courts are to apply principles declared in prior decisions that are substantially similar to a pending case.

7. ID.; ID.; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; ONE-YEAR PERIOD OF REDEMPTION IS RECKONED FROM DATE OF REGISTRATION OF SALE.— Since entry of the certificate of sale was validly registered, the redemption period accruing to respondents commenced therefrom, since the one-year period of redemption is reckoned from the date of registration of the certificate of

sale. It must be noted that on April 16, 1991, the sheriff's certificate of sale was registered and annotated only on the owner's duplicate copies of the titles and on April 16, 1992, the redemption period expired, without respondents having redeemed the properties. In fact, on April 24, 1992, NHA executed an Affidavit of Consolidation of Ownership. Clearly, respondents have lost their opportunity to redeem the properties in question.

8. ID.; ID.; ID.; ALLEGED DEFECT IN THE PUBLICATION AND NOTICE REQUIREMENTS OF THE EXTRAJUDICIAL FORECLOSURE SALE IS UNAVAILING; RESPONDENT'S ASPERSION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF FORECLOSURE SALE IS A FUTILE ATTEMPT TO SALVAGE ITS STATUTORY RIGHT TO REDEEM THEIR FORECLOSED PROPERTY WHICH RIGHT HAD LONG BEEN LOST BY INACTION.— As regards respondents' allegation on the defect in the publication and notice requirements of the extrajudicial foreclosure sale, the same is unavailing. The rule is that it is the mortgagor who alleges absence of a requisite who has the burden of establishing such fact. This is so because foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party who questions it. Here, except for their bare allegations, respondents failed to present any evidence to support them. In addition, NHA stated in its *Comment to Motion for Leave of Court to Intervene* that it had complied with the publication of the Notice of Sheriff's Sale in the Manila Times in the latter's issues dated July 14, 21 and 28, 1990. It also claimed that an Affidavit of Publication of said newspaper was attached as Annex "B" in the said comment. NHA also said that respondents had been furnished with a copy of the Notice of Sheriff's Sale as shown at the bottom portion of said notice. From all these, it would tend to show that respondents' aspersion of non-compliance with the requirements of foreclosure sale is a futile attempt to salvage its statutory right to redeem their foreclosed properties, which right had long been lost by inaction.

9. ID.; ID.; ID.; WRIT OF POSSESSION; EXPLAINED.— Considering that the foreclosure sale and its subsequent registration with the Register of Deeds were done validly, there

is no reason for the non-issuance of the writ of possession. A writ of possession is an order directing the sheriff to place a person in possession of a real or personal property, such as when a property is extrajudicially foreclosed. Section 7 of Act No. 3135 provides for the rule in the issuance of the writ of possession involving extrajudicial foreclosure sales of real estate mortgage. x x x This provision of law authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.

10. ID.; ID.; ID.; IT IS AN ESTABLISHED RULE THAT THE ISSUANCE OF WRIT OF POSSESSION TO A PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE IS MERELY A MINISTERIAL FUNCTION AND THE WRIT ISSUES AS A MATTER OF COURSE UPON THE FILING OF THE PROPER MOTION AND THE APPROVAL OF THE CORRESPONDING BOND.— The time-honored precept is that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. The writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the writ following these express provisions of law neither exercises his official discretion nor judgment. As such, the court granting the writ cannot be charged with having acted without jurisdiction or with grave abuse of discretion. To accentuate the writ's ministerial character, the Court disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

11. ID.; ID.; ID.; NO COMPELLING REASON IN CASE AT BAR TO VEER AWAY FROM THE ESTABLISHED RULE.— Believing that the instant case does not come within the penumbra of the foregoing rule, respondents resort to the ruling in *Barican v. Intermediate Appellate Court.* Unfortunately for them, the instant case does not even come close to the

cited case. There, the Court deemed it inequitable to issue a writ of possession in favor of the purchaser in the auction sale considering that the property involved was already in the possession of a third person by virtue of a deed of sale with assumption of mortgage even before the purchaser could register the sheriff's certificate of sale. Also, the auction buyer therein unreasonably deferred to exercise its right to acquire possession over the property. These circumstances are not present in the instant case. Moreover, in *Fernandez v. Espinoza*, the Court refused to apply the ruling in *Barican v. Intermediate Appellate Court* and *Cometa v. Intermediate Appellate Court*, two cases which are exemptions to the stated rule, reasoning that: In *Cometa*, which actually involved execution of judgment for the prevailing party in a damages suit, the subject properties were sold at the public auction at an unusually lower price, while in *Barican*, the mortgagee bank took five years from the time of foreclosure before filing the petition for the issuance of writ of possession. We have considered these equitable and peculiar circumstances in *Cometa* and *Barican* to justify the relaxation of the otherwise absolute rule. None of these exceptional circumstances, however, attended herein so as to place the instant case in the same stature as that of *Cometa* and *Barican*. Instead, the ruling in *Vaca v. Court of Appeals* is on all fours with the present petition. In *Vaca*, there is no dispute that the property was not redeemed within one year from the registration of the extrajudicial foreclosure sale; thus, the mortgagee bank acquired an absolute right, as purchaser, to the issuance of the writ of possession. Similarly, UOB, as the purchaser at the auction sale in the instant case, is entitled as a matter of right, to the issuance of the writ of possession. Just as in *Fernandez*, this Court does not see any compelling reason to veer away from the established rule. In fine, this Court finds that the Court of Appeals committed reversible error in ruling that the annotation of NHA's sheriff's certificate of sale on the duplicate certificates of title was not effective registration and in holding that respondents' redemption period had not expired.

APPEARANCES OF COUNSEL

Trial Services Division (NHA) for petitioner.
Eloy E. Bello for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the Amended Decision[1] of the Court of Appeals dated November 27, 2000 and its Resolution dated July 19, 2001 denying the motion for reconsideration of the National Housing Authority (NHA).

On April 19, 1983, spouses Augusto and Luz Basa loaned from NHA the amount of ₱556,827.10 secured by a real estate mortgage over their properties covered by Transfer Certificates of Title (TCTs) Nos. 287008 and 285413, located at No. 30 San Antonio St., San Francisco del Monte, Quezon City.[2] Spouses Basa did not pay the loan despite repeated demands. To collect its credit, the NHA, on August 9, 1990, filed a verified petition for extrajudicial foreclosure of mortgage before the Sheriff's Office in Quezon City, pursuant to Act No. 3135, as amended.[3]

After notice and publication, the properties were sold at public auction where NHA emerged as the highest bidder.[4] On April 16, 1991, the sheriff's certificate of sale was registered and annotated only on the owner's duplicate copies of the titles in the hands of the respondents, since the titles in the custody of the Register of Deeds were among those burned down when a fire gutted the City Hall of Quezon City on June 11, 1988.[5]

On April 16, 1992, the redemption period expired,[6] without respondents having redeemed the properties. Shortly thereafter,

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Bernardo P. Abesamis and Mercedes Gozo-Dadole, concurring; *rollo*, pp. 22-26.

[2] *Rollo*, p. 10.

[3] *Id.* at 11.

[4] CA *rollo*, p. 141.

[5] *Rollo*, p. 114.

[6] *Id.* at 38.

on April 24, 1992, NHA executed an Affidavit of Consolidation of Ownership[7] over the foreclosed properties, and the same was inscribed by the Register of Deeds on the certificates of title in the hand of NHA under Entry No. 6572/T-287008-PR-29207.[8]

On June 18, 1992, NHA filed a petition for the issuance of a Writ of Possession. The said petition was granted by the Regional Trial Court (RTC) in an Order[9] dated August 4, 1992.

A Writ of Possession[10] was issued on March 9, 1993 by the RTC, ordering spouses Augusto and Luz Basa to vacate the subject lots. The writ, however, remained unserved. This compelled NHA to move for the issuance of an *alias* writ of possession on April 28, 1993.

Before the RTC could resolve the motion for the issuance of an *alias* writ of possession, respondents spouses Basa and Eduardo Basa, on June 2, 1993, filed a *Motion for Leave to Intervene and Petition in Intervention (with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction)*.[11] Respondents anchored said petition for intervention on Section 8[12] of Act No. 3135, as amended, which gives the debtor/mortgagor the remedy to petition that the sale be set aside and the writ of possession be cancelled. In the said petition for

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[7] *Id.*

[8] CA *rollo*, p. 19.

[9] *Id.* at 23-24.

[10] *Id.* at 25.

[11] *Id.* at 28-36.

[12] SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession canceled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who

intervention, respondents averred that the extrajudicial foreclosure of the subject properties was a nullity since notices were not posted and published, written notices of foreclosure were not given to them, and notices of sale were not tendered to the occupants of the sold properties, thereby denying them the opportunity to ventilate their rights.[13] Respondents likewise insisted that even assuming *arguendo* that the foreclosure sale were valid, they were still entitled to redeem the same since the one-year redemption period from the registration of the sheriff's certificate of foreclosure sale had not yet prescribed.[14] Citing *Bernardez v. Reyes*[15] and *Bass v. De la Rama*,[16] respondents theorized that the instrument is deemed registered only upon actual inscription on the certificate of title in the custody of the civil registrar.[17] Since the sheriff's certificate was only inscribed on the owner's duplicate certificate of title, and not on the certificate of title in the possession of the Register of Deeds, then there was no effective registration and the one-year redemption period had not even begun to run. Thus, respondents asked the RTC, among others, to declare the foreclosure sale null and void, to allow the respondents to redeem the mortgaged properties in the amount of ₱21,160.00, and to cancel the Writ of Possession dated March 9, 1993.

NHA opposed respondents' petition for intervention.[18] It countered that the extrajudicial foreclosure sale was conducted

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obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

[13] CA *rollo*, pp. 30-31.

[14] *Id.* at 31.

[15] G.R. No. 71832, September 24, 1991, 201 SCRA 648.

[16] 73 Phil. 682 (1942).

[17] CA *rollo*, p. 32.

[18] NHA's opposition is embodied in its "Comment to Motion for Leave of Court to Intervene and to Quash/Cancel Writ of Possession" dated June 3, 1993. CA *rollo*, pp. 37-40.

validly and made in accordance with Act No. 3135 as evidenced by the publication of the Notice of Sheriff's Sale in the Manila Times in its issues dated July 14, 21 and 28, 1990.[19] NHA also said that respondents had been furnished with a copy of the Notice of Sheriff's Sale as shown at the bottom portion of said notice.[20] NHA maintained that respondents' right of redemption had long expired on April 15, 1992 since the certificate of sale was inscribed on their TCT Nos. 285413 and 287008 a year earlier, or on April 16, 1991. It pointed out that the RTC, *via* its Order dated August 4, 1992, had already ruled that respondents' right of redemption was already gone without them exercising said right. Since said order had already attained finality, the ruling therein could no longer be disturbed.

On January 2, 1995, the RTC issued the first assailed Order[21] with the following directives: 1) granting the issuance of the *alias* writ of possession which allowed NHA to take possession of the subject properties; 2) admitting the Petition in Intervention and "treating the same as the petition to set aside sale mentioned in [Sec. 8] of Act No. 3155"; and 3) granting the issuance of a Writ of Preliminary Injunction in favor of respondents that ordered NHA to refrain from selling or disposing of the contested properties. The pertinent portion of the order reads:

> After examining the record and following precedents x x x this Court hereby orders:
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> 1. The issuance of an *alias* writ of possession;
>
> 2. Admission of the "Petition in Intervention," treating the same as the "petition" to set aside sale, *etc*., mentioned in [Sec. 8] of Act No. 3155;
>
> 3. The issuance of a writ of preliminary injunction, after a BOND in the amount of ₱20,000.00 had been duly filed by intervenors, ordering movant National Housing Authority, its agents and/or any other person acting under its command, to desist and refrain from

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[19] CA *rollo*, p. 38.

[20] *Id*.

[21] *Id.* at 13.

selling or in any manner from disposing of the subject properties covered by TCT Nos. 287008 and 285413 and located at No. 30, San Antonio Street, San Francisco del Monte, Quezon City, pending the termination of this proceeding and/or unless a contrary order is issued by this Court;

4. Setting the hearing of the petition in intervention (to set aside) on March 17, 1995, at 8:30 a.m.[22]

NHA filed a motion for reconsideration[23] assailing the RTC's Order insofar as it admitted respondents' motion for intervention and issued a writ of preliminary injunction. NHA argued that respondents should have assailed the foreclosure sale during the hearing in the petition for the issuance of a Writ of Possession, and not during the hearing in the petition for the issuance of an *alias* writ of possession since the "petition" referred to in Section 8 of Act No. 3135 pertains to the original petition for the issuance of the Writ of Possession and not the Motion for the Issuance of an *Alias* Writ of Possession. NHA stressed that another reason why the petition for intervention should be denied was the finality of the Order dated August 4, 1992 declaring respondents' right of redemption barred by prescription. Lastly, NHA asserted that the writ of possession was issued as a matter of course upon filing of the proper motion and thereby, the court was bereft of discretion.

In the second assailed Order[24] dated September 4, 1995, the RTC denied NHA's motion for reconsideration reasoning that the admission of the intervention was sanctioned by Section 8 of Act No. 3135. As to the grant of preliminary injunction, the RTC made the justification that if the NHA was not restrained, the judgment which may be favorable to respondents would be ineffectual. The order partly provides:

The motion is without merit. The admission of the intervention is sanctioned by Sec. 8 of Act No. 3135. And, because, otherwise

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[22] *Id*.

[23] *Id.* at 41-45.

[24] *Id.* at 14.

or if no preliminary injunction is issued, the movant NHA may, before final judgment, do or continue the doing of the act with the intervenor asks the court to restrain, and thus make ineffectual the final judgment rendered afterwards which may grant the relief sought by the intervenor.

ACCORDINGLY, the motion for reconsideration is DENIED.[25]

Undaunted, NHA filed on November 24, 1995, a special civil action for *certiorari* and prohibition before the Court of Appeals.

The Court of Appeals rendered a Decision[26] dated February 24, 2000, in favor of the NHA. It declared null and void the assailed orders of the RTC dated January 2, 1995 and September 4, 1995, to the extent that the said orders admitted the petition in intervention and granted the issuance of the preliminary injunction; but it upheld the grant of the *alias* writ of possession, thus:

WHEREFORE, the petition is GRANTED, and the assailed order of January 2, 1995 is declared NULL AND VOID except for the portion directing the issuance of an alias writ of possession. Likewise declared NULL AND VOID is the second assailed order of September 4, 1995 denying the petitioner's motion for reconsideration. Let an *alias* writ of possession be issued and executed/implemented by the public respondent without further delay.[27]

The Court of Appeals defended its affirmation of the RTC's grant of the *alias* writ of possession in NHA's favor by saying that it was a necessary consequence after the earlier writ was left unserved to the party. It further explained that NHA was entitled to the writ of possession as a matter of course after the lapse of the redemption period.

As to the RTC's admission of respondents' petition for intervention, the appellate court opined that it was improperly

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[25] *Id*.

[26] *Id.* at 99-105.

[27] *Id.* at 104.

and erroneously made. The Court of Appeals believed that the only recourse available to a mortgagor, in this case the respondents, in a foreclosure sale is to question the validity of the sale through a petition to set aside the sale and to cancel the writ of possession, a summary procedure provided for under Section 112 of the Land Registration Act. It also observed that the grant of the preliminary injunction by the RTC was uncalled for as it would effectively defeat the right of NHA to possession, the latter having been entitled by virtue of the grant of the *alias* writ of possession.

Respondents filed a motion for reconsideration.[28] They alleged that since they raised the issue that their right of redemption had not prescribed, said fact should have changed the whole scenario such that the issuance of a writ of possession ceased to be summary in nature and was no longer ministerial. Respondents then concluded that their right to redeem the properties against NHA's right to the writ of possession must be threshed out in a hearing of the case on its merits.

With regard to the RTC Order dated August 4, 1992 granting the writ of possession which, according to the NHA, became final and executory, respondents argued that said order did not constitute *res judicata* so as to bar the filing of the petition for intervention since the said order was not a judgment on the merits that could attain finality.

Also, respondents would like the Court of Appeals to treat the petition for intervention not only as an opposition to the issuance of the *alias* writ of possession, but also as a proper remedy under Section 8 of Act No. 3135, as amended, in view of the various issues raised.

On November 27, 2000, the Court of Appeals, in its Amended Decision, reconsidered its earlier stance. It declared that the period of redemption had not expired as the certificate of sale had not been registered or annotated in the original copies of the titles supposedly kept with the Register of Deeds since said

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[28] *Id.* at 106-113.

titles were earlier razed by fire. Taking its cue from *Bass v. De la Rama* where the Court purportedly made a ruling that entry of a document, such as sale of real property, in the entry book is insufficient to treat such document as registered, unless the same had been annotated on the certificate of title; the Court of Appeals went on to say that the entry of the certificate of sale in the owner's duplicate of the titles could not have been sufficient to register the same since anyone who would wish to check with the Register of Deeds would not see any annotation. Thus, entry made on the owner's duplicate of the titles cannot be considered notice that would bind the whole world. Having been deprived of their right of redemption, the Court of Appeals deemed it proper to allow respondents to intervene. The dispositive part of the amended decision decrees:

> WHEREFORE, the motion for reconsideration is GRANTED. Our decision dated February 24, 2000, is RECONSIDERED and SET ASIDE and the petition DISMISSED.[29]

Unfazed, NHA filed a motion for reconsideration, which the Court of Appeals denied in its July 19, 2001 Resolution, to wit:

> ACCORDINGLY, the Motion for Reconsideration dated February 24, 2000 is DENIED for lack of merit.[30]

Hence, the instant petition.

In its memorandum, NHA tendered the following issues:

1. WHETHER OR NOT THE ANNOTATION OF THE SHERIFF'S CERTIFICATE OF SALE IN THE PRIMARY ENTRY BOOK OF THE REGISTER OF DEEDS AND ON THE OWNER'S DUPLICATE TITLE IS SUFFICIENT COMPLIANCE WITH THE REQUIREMENT OF LAW ON REGISTRATION.
2. WHETHER OR NOT THE CASE OF *BASS VS. DE LA RAMA* HAS BEEN SUPERSEDED.[31]

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[29] *Rollo*, p. 26.

[30] *Id.* at 27.

[31] *Id.* at 116-117.

Respondents, on the other hand, offered the following as issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE LOWER COURT DID NOT ACT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ADMITTING THE RESPONDENTS' INTERVENTION AND GRANTING THE EQUITABLE WRIT OF INJUNCTION THEREBY DISMISSING THE PETITION FOR *CERTIORARI* AND PROHIBITION.

II

WHETHER OR NOT THE INSTANT PETITION COMPLIES WITH THE REQUIREMENTS OF RULE 45 OF THE RULES OF COURT.[32]

On the procedural aspect, respondents question NHA's alleged failure to include in its petition copies of material portions of the record such as pleadings filed in the RTC and the Court of Appeals as required under Section 4, Rule 45 of the Rules of Court. Respondents also pointed out the purported defective verification of NHA in view of the fact that it merely stated that the one verifying had read the allegations of the petition and that the same were true and correct to the best of his knowledge. According to respondents, such declarations were not in accordance with the rules which require that a verified pleading must state that the affiant had read the pleading and that the allegations therein were true and correct based on his **personal knowledge** and not only to the "best" of his knowledge.

As to the merits, NHA stresses that the annotation and entry in the owner's duplicate certificate of titles of the sheriff's certificate of sale are sufficient compliance with the requirement of law on registration. To support this, NHA refers to Land Registration Administration Circular No. 3 dated December 6, 1988, entitled "Entry and Provisional Registration of Instruments Pending Reconstitution of Title" which allegedly authorized all Registers of Deeds to accept for entry and provisional registration

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[32] *Id.* at 137.

instruments affecting lost or destroyed certificates of title pending reconstitution of the original. The legality and validity of the disputed registration on its duplicate copies of the sheriff's certificate of sale, NHA insists, are backed by this Court's ruling in *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*,[33] where purportedly, this Court made a favorable interpretation of Section 56 of Presidential Decree No. 1529. NHA says that the inscription of the sheriff's certificate of sale only to the owner's duplicate copies, but not to those in the custody of the register of deeds is justified as the latter were burned down. Thus, it could not be blamed for the non-registration of the sale in the original copies.

NHA faults the Court of Appeals' reliance on *Bass v. De la Rama* since the ruling therein stating that entry and annotation of a sale instrument on the owner's duplicate copy only as insufficient registration, was already abandoned in *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*, where it was allegedly ruled that the primary entry alone of the transaction produces the effect of registration so long as the registrant has complied with all that is required of him for purposes of entry and annotation.

In contrast, respondents submit that annotation of the sheriff's certificate of sale on the owner's copy is inadequate to propel the running of the redemption period. They firmly believe that for the sale instrument to be considered as registered, the inscription must be made on the reconstituted titles.

Respondents disagree with NHA's opinion that *Bass v. De la Rama* was superceded by *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*. They are of the persuasion that the ruling in *DBP* pertains exclusively to the unique factual milieu and the issues attendant therein, but not to the instant case where *Bass* purportedly applies. Respondents also assail NHA's citation of *Sta. Ignacia Rural Bank, Inc. v. Court of Appeals*.[34] According to them, said case finds no

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[33] UDK No. 7671, June 23, 1988, 162 SCRA 450.

[34] G.R. No. 97872, March 1, 1994, 230 SCRA 513.

application to the instant controversy because the issue involved in the former was whether the redemption period should be reckoned from the date of the auction sale or the registration of the certificate of sale, which ostensibly is not the bone of contention in this case.

Ascribing NHA's inaction to have the burned titles reconstituted, respondents assert that such neglect should not be used as a justification for the non-inscription in the original titles of the certificate of sale. Additionally, respondents insist that the question of whether the redemption period should be reckoned from the inscription on the owner's duplicate copies is a factual and legal issue that is appropriately adjudicated in a hearing on the merits of their petition in intervention, and not in the instant special civil action for *certiorari* and prohibition which is limited in scope, namely, whether the RTC committed grave abuse of discretion amounting to lack of jurisdiction in admitting their petition in intervention.

Respondents reiterate that the issuance of the writ of possession prayed for by NHA before the RTC is no longer ministerial since it raised the issue of whether their period of redemption has already expired. They cite *Barican v. Intermediate Appellate Court*[35] as the authority to this argument.

We dwell first with the procedural issues before the main controversy. Respondents contend that the instant petition is dismissible on the ground that NHA failed to attach pleadings filed in the RTC and the Court of Appeals as required under Section 4, Rule 45 of the Rules of Court which partly provides:

> SEC. 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall x x x (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; x x x.

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[35] G.R. No. 79906, June 20, 1988, 162 SCRA 358.

In its petition, NHA attached the February 24, 2000 Decision, the November 27, 2000 Amended Decision, and the July 19, 2001 Resolution all of the Court of Appeals; copies of the transfer certificates of title of the disputed properties; and the June 13, 1994 Order of the Quezon City RTC ordering the reconstitution of the said titles. This Court finds that NHA substantially complied with the requirements under Section 4 of Rule 45. The same conclusion was arrived at by this Court in *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd.*[36] when it was faced with the same procedural objection, thus:

As held by this Court in *Air Philippines Corporation v. Zamora*:

> [E]ven if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.
>
> Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

Nevertheless, even if the pleadings and other supporting documents were not attached to the petition, the dismissal is unwarranted because the CA records containing the promissory notes and the real estate and chattel mortgages were elevated to this Court. Without a doubt, we have sufficient basis to actually and completely dispose of the case.

We must stress that cases should be determined on the merits, after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections. In that way, the ends of justice would be served better. Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict

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[36] G.R. No. 180458, July 30, 2009, 594 SCRA 461, 468-469.

and rigid application of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided. In fact, Section 6 of Rule 1 states that the Rules shall be liberally construed in order to promote their objective of ensuring the just, speedy and inexpensive disposition of every action and proceeding.

Contrary to respondents' assertion, NHA's verification conforms to the rule. Section 4, Rule 7 of the Rules of Court states:

> SEC. 4. *Verification*. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
>
> A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

The reason for requiring verification in the petition is to secure an assurance that the allegations of a pleading are true and correct; are not speculative or merely imagined; and have been made in good faith.[37] To achieve this purpose, the verification of a pleading is made through an affidavit or sworn statement confirming that the affiant has read the pleading whose allegations are true and correct of the affiant's personal knowledge or based on authentic records.[38]

The General Manager of NHA verified the petition as follows:

> 3. I have read the allegations contained therein and that the same are true and correct to the best of my own personal knowledge.[39]

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[37] *Valmonte v. Alcala*, G.R. No. 168667, July 23, 2008, 559 SCRA 536, 543-544.

[38] *Id*.

[39] *Rollo,* p. 18.

A reading of the above verification reveals nothing objectionable about it. The affiant confirmed that he had read the allegations in the petition which were true and correct based on his personal knowledge. The addition of the words "to the best" before the phrase "of my personal knowledge" did not violate the requirement under Section 4 of Rule 7, it being sufficient that the affiant declared that the allegations in the petition are true and correct based on his personal knowledge.

Now, as to the merits of the case. The main issue before us is whether the annotation of the sheriff's certificate of sale on the owner's duplicate certificate of titles is sufficient registration considering that the inscription on the original certificates could not be made as the same got burned.

Jurisprudence is replete with analogous cases. Of foremost importance is *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*[40] where the Court listed cases where the transaction or instrument was annotated not on the original certificate but somewhere else. In that case, DBP, following the extrajudicial foreclosure sale where it emerged as the highest bidder, registered with the Register of Deeds the sheriff's certificate of sale in its favor. After it had paid the required fees, said transaction was entered in the primary entry book. However, the annotation of the said transaction to the originals of the certificates of title could not be done because the same titles were missing from the files of the Registry. This prompted DBP to commence reconstitution proceedings of the lost titles. Four years had passed before the missing certificates of title were reconstituted. When DBP sought the inscription of the four-year old sale transaction on the reconstituted titles, the Acting Register of Deeds, being in doubt of the proper action to take, referred the matter to the Commissioner of the Land Registration Authority by *consulta*, the latter resolved against the annotation of the sale transaction and opined that said entry was "ineffective due to the impossibility of accomplishing registration at the time the document was entered because of the non-availability of the certificate (sic) of title

[40] *Supra* note 33.

involved."[41] In other words, annotation on the primary book was deemed insufficient registration. The Court disagreed with this posture. Considering that DBP had paid all the fees and complied with all the requirements for purposes of both primary entry and annotation of the certificate of sale, the Court declared that mere entry in the primary book was considered sufficient registration since "[DBP] cannot be blamed that annotation could not be made contemporaneously with the entry because the originals of the subject certificates of title were missing and could not be found, since it had nothing to do with their safekeeping. If anyone was responsible for failure of annotation, it was the Register of Deeds who was chargeable with the keeping and custody of those documents."[42] To buttress its conclusion, the Court reviewed the relevant jurisprudence starting from 1934. The Court noted that before the Second World War, particularly in *Government of the Philippine Islands v. Aballe*,[43] the prevailing doctrine was an inscription in the book of entry even without the notation on the certificate of title was considered as satisfactory and produced all the effects which the law gave to its registration. During the war, however, the Court observed that there was apparent departure from said ruling since in *Bass v. De la Rama*, the holding was that entry of an instrument in the primary entry book does not confer any legal effect without a memorandum thereof inscribed on the certificate of title.[44] DBP noted that *Bass v. De la Rama*, however, survived only for a little while since "later cases appear to have applied the *Aballe* ruling that entry in the day book, even without the corresponding annotation on the certificate of title, is equivalent to, or produces the effect of, registration to voluntary transactions, provided the requisite fees are paid and the owner's duplicates of the certificates of title affected are presented."[45]

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[41] *Id.* at 454.

[42] *Id.* at 456.

[43] 60 Phil. 986 (1934).

[44] *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija, supra* note 33 at 456.

[45] *Id.* at 457-458.

These later cases are *Levin v. Bass*[46] and *Potenciano v. Dineros*,[47] both of which involve the issue of whether entry in the day book of a deed of sale, payment of the fees, and presentation of the owner's duplicate certificate of title constitute a complete act of registration.[48]

Simply, respondents' resort to *Bass v. De la Rama* is futile as the same was abandoned by the later cases, *i.e.*, *Bass*, *Potenciano* and *DBP*.

In the recent case of *Autocorp Group v. Court of Appeals*,[49] the respondent was awarded the foreclosed parcels of land. A sheriff's certificate of sale was thereafter issued in its favor. Thereafter, petitioners in that case filed a complaint before the RTC with a prayer for the issuance of an *ex parte* TRO aimed at preventing the Register of Deeds from registering the said certificate of sale in the name of the respondent and from taking possession of the subject properties.[50] Before the RTC could issue a TRO, respondent presented the sheriff's certificate of sale to the Register of Deeds who entered the same certificate in the primary book, even if the registration fee was paid only the following day. Four days after, the RTC issued a TRO directing the Register of Deeds to refrain from registering the said sheriff's certificate of sale. A preliminary injunction was thereafter issued as the TRO was about to expire. The preliminary injunction was questioned by therein respondent. One of the main issues raised there was whether the entry of the certificate of sale in the primary book was equivalent to registration such that the TRO and the preliminary injunction issues would not lie anymore as the act sought to be restrained had become an accomplished act. The Court held that the TRO and the preliminary injunction had already become moot and academic

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[46] 91 Phil. 419 (1952).

[47] 97 Phil. 196 (1955).

[48] *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*, *supra* note 33 at 458.

[49] G.R. No. 157553, September 8, 2004, 437 SCRA 678.

[50] *Id.* at 682.

by the earlier entry of the certificate of sale in the primary entry book which was tantamount to registration, thus:

> In fine, petitioner's prayer for the issuance of a writ of injunction, to prevent the register of deeds from registering the subject certificate of sale, had been rendered moot and academic by the valid ***entry of the instrument in the primary entry book. Such entry is equivalent to registration***. Injunction would not lie anymore, as the act sought to be enjoined had already become a *fait accompli* or an accomplished act.[51]

Indeed, the prevailing rule is that there is effective registration once the registrant has fulfilled all that is needed of him for purposes of entry and annotation, so that what is left to be accomplished lies solely on the register of deeds. The Court thus once held:

> Current doctrine thus seems to be that entry alone produces the effect of registration, whether the transaction entered is a voluntary or an involuntary one, so long as the registrant has complied with all that is required of him for purposes of entry and annotation, and nothing more remains to be done but a duty incumbent solely on the register of deeds.[52]

In the case under consideration, NHA presented the sheriff's certificate of sale to the Register of Deeds and the same was entered as Entry No. 2873 and said entry was further annotated in the owner's transfer certificate of title.[53] A year later and after the mortgagors did not redeem the said properties, respondents filed with the Register of Deeds an Affidavit of Consolidation of Ownership[54]after which the same instrument was presumably entered into in the day book as the same was annotated in the owner's duplicate copy.[55] Just like in *DBP*,

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[51] *Id.* at 688-689.

[52] *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*, *supra* note 33 at 459.

[53] Exhibit "E", CA *rollo*, p. 19 for TCT No. 287008; Exhibit "D", *rollo*, p. 35 for TCT No. 285413.

[54] *Id.*; Exhibit "D", CA *rollo*, p. 191 for TCT No. 285413.

[55] *Id*.

Levin, *Potenciano* and *Autocorp*, NHA followed the procedure in order to have its sheriff's certificate of sale annotated in the transfer certificates of title. There would be, therefore, no reason not to apply the ruling in said cases to this one. It was not NHA's fault that the certificate of sale was not annotated on the transfer certificates of title which were supposed to be in the custody of the Registrar, since the same were burned. Neither could NHA be blamed for the fact that there were no reconstituted titles available during the time of inscription as it had taken the necessary steps in having the same reconstituted as early as July 15, 1988.[56] NHA did everything within its power to assert its right.

While it may be true that, in *DBP*, the Court ruled that "in the particular situation here obtaining, annotation of the disputed entry on the reconstituted originals of the certificates of title to which it refers is entirely proper and justified," this does not mean, as respondents insist, that the ruling therein applies exclusively to the factual milieu and the issue obtaining in said case, and not to similar cases. There is nothing in the subject declaration that categorically states its *pro hac vice* character. For in truth, what the said statement really conveys is that the current doctrine that entry in the primary book produces the effect of registration can be applied in the situation obtaining in that case since the registrant therein complied with all that was required of it, hence, it was fairly reasonable that its acts be given the effect of registration, just as the Court did in the past cases. In fact the Court there continued with this pronouncement:

> To hold said entry ineffective, as does the appealed resolution, amounts to declaring that it did not, and does not, protect the registrant (DBP) from claims arising, or transactions made, thereafter which are adverse to or in derogation of the rights created or conveyed by the transaction thus entered. That, surely, is a result that is neither just nor can, by any reasonable interpretation of Section 56 of Presidential Decree No. 1529 be asserted as warranted by its terms.[57]

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[56] CA *rollo*, pp. 183 and 189.

[57] *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*, *supra* note 33 at 459-460.

What is more, in *Autocorp Group v. Court of Appeals,*[58] the pertinent *DBP* ruling was applied, thereby demonstrating that the said ruling in *DBP* may be applied to other cases with similar factual and legal issues, *viz*:

> Petitioners contend that the aforecited case of DBP is not apropos to the case at bar. Allegedly, in DBP, the bank not only paid the registration fees but also presented the owner's duplicate certificate of title. We find no merit in petitioner's posture x x x.
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> x x x x x x x x x
>
> Like in *DBP v. Acting Register of Deeds of Nueva Ecija*, the instrument involved in the case at bar, is a sheriff's certificate of sale, We hold now, as we held therein, that the registrant is under no necessity to present the owner's duplicates of the certificates of title affected, for purposes of primary entry, as the transaction sought to be recorded is an involuntary transaction.
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> x x x x x x x x x
>
> x x x Such entry is equivalent to registration. Injunction would not lie anymore, as the act sought to be enjoined had already become a *fait accompli* or an accomplished act.[59]

Moreover, respondents' stand on the non-applicability of the *DBP* case to other cases, absent any statement thereof to such effect, contravenes the principle of *stare decisis* which urges that courts are to apply principles declared in prior decisions that are substantially similar to a pending case.[60]

Since entry of the certificate of sale was validly registered, the redemption period accruing to respondents commenced therefrom, since the one-year period of redemption is reckoned from the date of registration of the certificate of sale.[61] It must be noted that on April 16, 1991, the sheriff's certificate of sale

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[58] *Supra* note 49 at 686-689.

[59] *Id*.

[60] *Negros Navigation Co., Inc. v. Court of Appeals*, 346 Phil. 551, 565 (1997).

[61] *Id*.

was registered and annotated only on the owner's duplicate copies of the titles and on April 16, 1992, the redemption period expired, without respondents having redeemed the properties. In fact, on April 24, 1992, NHA executed an Affidavit of Consolidation of Ownership. Clearly, respondents have lost their opportunity to redeem the properties in question.

As regards respondents' allegation on the defect in the publication and notice requirements of the extrajudicial foreclosure sale, the same is unavailing. The rule is that it is the mortgagor who alleges absence of a requisite who has the burden of establishing such fact.[62] This is so because foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party who questions it.[63] Here, except for their bare allegations, respondents failed to present any evidence to support them. In addition, NHA stated in its *Comment to Motion for Leave of Court to Intervene* that it had complied with the publication of the Notice of Sheriff's Sale in the Manila Times in the latter's issues dated July 14, 21 and 28, 1990.[64] It also claimed that an Affidavit of Publication of said newspaper was attached as Annex "B" in the said comment.[65] NHA also said that respondents had been furnished with a copy of the Notice of Sheriff's Sale as shown at the bottom portion of said notice.[66] From all these, it would tend to show that respondents' aspersion of non-compliance with the requirements of foreclosure sale is a futile attempt to salvage its statutory right to redeem their foreclosed properties, which right had long been lost by inaction.

Considering that the foreclosure sale and its subsequent registration with the Register of Deeds were done validly, there is no reason for the non-issuance of the writ of possession. A

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[62] *Cristobal v. Court of Appeals*, 384 Phil. 807, 815 (2000).

[63] *Id*.

[64] CA *rollo*, p. 38.

[65] *Id*.

[66] *Id*.

writ of possession is an order directing the sheriff to place a person in possession of a real or personal property, such as when a property is extrajudicially foreclosed.[67] Section 7 of Act No. 3135 provides for the rule in the issuance of the writ of possession involving extrajudicial foreclosure sales of real estate mortgage, to wit:

> Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in the form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four Hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

This provision of law authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title.[68] Upon the filing of such motion and the approval of the corresponding bond, the law

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[67] *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 144.

[68] *Chailease Finance Corporation v. Ma*, 456 Phil. 498, 504 (2003).

also in express terms directs the court to issue the order for a writ of possession.[69]

The time-honored precept is that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right.[70] Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[71] The writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the writ following these express provisions of law neither exercises his official discretion nor judgment.[72] As such, the court granting the writ cannot be charged with having acted without jurisdiction or with grave abuse of discretion.[73] To accentuate the writ's ministerial character, the Court disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.[74]

Believing that the instant case does not come within the penumbra of the foregoing rule, respondents resort to the ruling in *Barican v. Intermediate Appellate Court*.[75] Unfortunately for them, the instant case does not even come close to the cited case. There, the Court deemed it inequitable to issue a writ of possession in favor of the purchaser in the auction sale considering that the property involved was already in the possession of a third person by virtue of a deed of sale with assumption of mortgage even before the purchaser could register the sheriff's certificate of sale. Also, the auction buyer therein unreasonably deferred to exercise its right to acquire possession over the

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[69] *Id*.

[70] *Manalo v. Court of Appeals*, 419 Phil. 215, 235 (2001).

[71] *Id*.

[72] *Id*.

[73] *Id*.

[74] *Chailease Finance Corporation v. Ma*, *supra* note 68, citing *Manalo v. Court of Appeals*, *id*.

[75] *Supra* note 35.

property. These circumstances are not present in the instant case.

Moreover, in *Fernandez v. Espinoza*,[76] the Court refused to apply the ruling in *Barican v. Intermediate Appellate Court*[77] and *Cometa v. Intermediate Appellate Court*,[78] two cases which are exemptions to the stated rule, reasoning that:

> In *Cometa*, which actually involved execution of judgment for the prevailing party in a damages suit, the subject properties were sold at the public auction at an unusually lower price, while in *Barican*, the mortgagee bank took five years from the time of foreclosure before filing the petition for the issuance of writ of possession. We have considered these equitable and peculiar circumstances in *Cometa* and *Barican* to justify the relaxation of the otherwise absolute rule. None of these exceptional circumstances, however, attended herein so as to place the instant case in the same stature as that of *Cometa* and *Barican*. Instead, the ruling in *Vaca v. Court of Appeals* is on all fours with the present petition. In *Vaca*, there is no dispute that the property was not redeemed within one year from the registration of the extrajudicial foreclosure sale; thus, the mortgagee bank acquired an absolute right, as purchaser, to the issuance of the writ of possession. Similarly, UOB, as the purchaser at the auction sale in the instant case, is entitled as a matter of right, to the issuance of the writ of possession.

Just as in *Fernandez*, this Court does not see any compelling reason to veer away from the established rule.

In fine, this Court finds that the Court of Appeals committed reversible error in ruling that the annotation of NHA's sheriff's certificate of sale on the duplicate certificates of title was not effective registration and in holding that respondents' redemption period had not expired.

WHEREFORE, premises considered, the instant petition is hereby *GRANTED*. The Amended Decision of the Court of Appeals dated November 27, 2000 is *SET ASIDE*.

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[76] *Supra* note 67 at 153.

[77] *Supra* note 35.

[78] 235 Phil. 569 (1987).

SO ORDERED.

Puno, C.J. (Chairperson), Carpio,[*] *Bersamin,* and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 166620. April 20, 2010]

ATTY. SYLVIA BANDA, CONSORICIA O. PENSON, RADITO V. PADRIGANO, JEAN R. DE MESA, LEAH P. DELA CRUZ, ANDY V. MACASAQUIT, SENEN B. CORDOBA, ALBERT BRILLANTES, GLORIA BISDA, JOVITA V. CONCEPCION, TERESITA G. CARVAJAL, ROSANNA T. MALIWANAG, RICHARD ODERON, CECILIA ESTERNON, BENEDICTO CABRAL, MA. VICTORIA E. LAROCO, CESAR ANDRA, FELICISIMO GALACIO, ELSA R. CALMA, FILOMENA A. GALANG, JEAN PAUL MELEGRITO, CLARO G. SANTIAGO, JR., EDUARDO FRIAS, REYNALDO O. ANDAL, NEPHTALIE IMPERIO, RUEL BALAGTAS, VICTOR R. ORTIZ, FRANCISCO P. REYES, JR., ELISEO M. BALAGOT, JR., JOSE C. MONSALVE, JR., ARTURO ADSUARA, F.C. LADRERO, JR., NELSON PADUA, MARCELA C. SAYAO, ANGELITO MALAKAS, GLORIA RAMENTO, JULIANA SUPLEO, MANUEL MENDRIQUE, E. TAYLAN, CARMELA BOBIS, DANILO VARGAS, ROY-LEO C. PABLO, ALLAN VILLANUEVA, VICENTE R. VELASCO, JR., IMELDA ERENO, FLORIZA M. CATIIS, RANIEL R. BASCO,

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[*] Per Special Order No. 834, dated 12 April 2010, signed by Chief Justice Reynato S. Puno designating Associate Justice Antonio T. Carpio to replace Associate Justice Conchita Carpio Morales, who is on official leave.

E. JALIJALI, MARIO C. CARAAN, DOLORES M. AVIADO, MICHAEL P. LAPLANA, GUILLERMO G. SORIANO, ALICE E. SOJO, ARTHUR G. NARNE, LETICIA SORIANO, FEDERICO RAMOS, JR., PETERSON CAAMPUED, RODELIO L. GOMEZ, ANTONIO D. GARCIA, JR., ANTONIO GALO, A. SANCHEZ, SOL E. TAMAYO, JOSEPHINE A.M. COCJIN, DAMIAN QUINTO, JR., EDLYN MARIANO, M.A. MALANUM, ALFREDO S. ESTRELLA, and JESUS MEL SAYO, *petitioners, vs.* **EDUARDO R. ERMITA, in his capacity as Executive Secretary, THE DIRECTOR GENERAL OF THE PHILIPPINE INFORMATION AGENCY and THE NATIONAL TREASURER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; CLASS SUIT; REQUISITES; EXPLAINED.— [T]he requisites of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned. In *Mathay v. The Consolidated Bank and Trust Company*, the Court held that: An action does not become a class suit merely because it is designated as such in the pleadings. Whether the suit is or is not a class suit depends upon the attending facts, and **the complaint, or other pleading initiating the class action should allege** the existence of the necessary facts, to wit, the existence of a subject matter of common interest, and the existence of a class and **the number of persons in the alleged class, in order that the court might be enabled to determine whether the members of the class are so numerous as to make it impracticable to bring them all before the court, to contrast the number appearing on the record with the number in the class and to determine whether claimants on record adequately represent the class and the subject matter of general or common interest**.

2. ID.; ID.; ID.; ID.; PETITION FAILED TO STATE THE NUMBER OF EMPLOYEES WHO WOULD BE AFFECTED BY THE ASSAILED EXECUTIVE ORDER AND WHO WERE ALLEGEDLY REPRESENTED BY PETITIONERS.— [T]he petition failed to state the number of NPO employees who would be affected by the assailed Executive Order and who were allegedly represented by petitioners. It was the Solicitor General, as counsel for respondents, who pointed out that there were about 549 employees in the NPO. The 67 petitioners undeniably comprised a small fraction of the NPO employees whom they claimed to represent. Subsequently, 32 of the original petitioners executed an Affidavit of Desistance, while one signed a letter denying ever signing the petition, ostensibly reducing the number of petitioners to 34. We note that counsel for the petitioners challenged the validity of the desistance or withdrawal of some of the petitioners and insinuated that such desistance was due to pressure from people "close to the seat of power." Still, even if we were to disregard the affidavit of desistance filed by some of the petitioners, it is highly doubtful that a sufficient, representative number of NPO employees have instituted this purported class suit. A perusal of the petition itself would show that of the 67 petitioners who signed the Verification/ Certification of Non-Forum Shopping, only 20 petitioners were in fact mentioned in the *jurat* as having duly subscribed the petition before the notary public. In other words, only 20 petitioners effectively instituted the present case.

3. ID.; ID.; ID.; ID.; FACTORS IN DETERMINING THE QUESTION OF ADEQUATE AND FAIR REPRESENTATION OF MEMBERS OF A CLASS.— [I]n *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*, we observed that an element of a class suit or representative suit is the **adequacy of representation**. In determining the question of fair and adequate representation of members of a class, the court must consider (a) whether the interest of the named party is coextensive with the interest of the other members of the class; (b) the proportion of those made a party, as it so bears, to the total membership of the class; and (c) any other factor bearing on the ability of the named party to speak for the rest of the class.

4. ID.; ID.; ID.; ID.; NO CLASS SUIT WHERE THERE IS AN APPARENT CONFLICT BETWEEN PETITIONERS' INTERESTS AND THOSE OF THE PERSONS WHOM THEY CLAIM TO REPRESENT.— [W]e held in *Ibañes v. Roman Catholic Church* that where the interests of the plaintiffs and the other members of the class they seek to represent are diametrically opposed, the class suit will not prosper. It is worth mentioning that a Manifestation of Desistance, to which the previously mentioned Affidavit of Desistance was attached, was filed by the President of the National Printing Office Workers Association (NAPOWA). The said manifestation expressed NAPOWA's opposition to the filing of the instant petition in any court. Even if we take into account the contention of petitioners' counsel that the NAPOWA President had no legal standing to file such manifestation, the said pleading is a clear indication that there is a divergence of opinions and views among the members of the class sought to be represented, and not all are in favor of filing the present suit. There is here an apparent conflict between petitioners' interests and those of the persons whom they claim to represent. Since it cannot be said that petitioners sufficiently represent the interests of the entire class, the instant case cannot be properly treated as a class suit.

5. POLITICAL LAW; EXECUTIVE DEPARTMENT; POWERS OF THE PRESIDENT; POWER OF CONTROL OVER EXECUTIVE OFFICES AND POWER TO REORGANIZE THE SAME; BASIS.— It is a well-settled principle in jurisprudence that the President has the power to reorganize the offices and agencies in the executive department in line with the President's constitutionally granted power of control over executive offices and by virtue of previous delegation of the legislative power to reorganize executive offices under existing statutes. In *Buklod ng Kawaning EIIB v. Zamora*, the Court pointed out that Executive Order No. 292 or the Administrative Code of 1987 gives the President continuing authority to reorganize and redefine the functions of the Office of the President. Section 31, Chapter 10, Title III, Book III of the said Code. xxx Interpreting the foregoing provision, we held in *Buklod ng Kawaning EIIB*, thus: But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to

end here. We must not lose sight of the very source of the power – that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President**. In *Canonizado v. Aguirre* [323 SCRA 312 (2000)], we ruled that reorganization "*involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.*" It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them.** The EIIB is a bureau attached to the Department of Finance. It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize. It is undisputed that the NPO, as an agency that is part of the Office of the Press Secretary (which in various times has been an agency directly attached to the Office of the Press Secretary or as an agency under the Philippine Information Agency), is part of the Office of the President.

6. ID.; ADMINISTRATIVE CODE OF 1987; SECTION 31 THEREOF AUTHORIZES THE PRESIDENT TO RESTRUCTURE THE INTERNAL ORGANIZATION OF THE OFFICE OF THE PRESIDENT AND TO TRANSFER FUNCTIONS OR OFFICES FROM THE OFFICE OF THE PRESIDENT TO ANY OTHER DEPARTMENT OR AGENCY IN THE EXECUTIVE BRANCH, AND VICE VERSA.— Pertinent to the case at bar, Section 31 of the Administrative Code of 1987 quoted above authorizes the President (a) to **restructure** the internal organization of the Office of the President Proper, including the immediate Offices, the President Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another, and (b) to transfer functions or offices from the Office of the President to any other Department or Agency in the Executive Branch, and vice versa. Concomitant to such power to abolish, merge or consolidate offices in the Office

of the President Proper and to transfer functions/offices not only among the offices in the Office of President Proper but also the rest of the Office of the President and the Executive Branch, the President implicitly has the power to effect less radical or less substantive changes to the functional and internal structure of the Office of the President, including the modification of functions of such executive agencies as the exigencies of the service may require.

7. ID.; ID.; ID.; THERE WAS NEITHER AN ABOLITION OF THE NATIONAL PRINTING OFFICE NOR REMOVAL OF ANY OF ITS FUNCTIONS TO BE TRANSFERRED TO ANOTHER AGENCY.— [T]here was neither an abolition of the NPO nor a removal of any of its functions to be transferred to another agency. Under the assailed Executive Order No. 378, the NPO remains the main printing arm of the government for all kinds of government forms and publications but in the interest of greater economy and encouraging efficiency and profitability, it must now compete with the private sector for certain government printing jobs, with the exception of election paraphernalia which remains the exclusive responsibility of the NPO, together with the Bangko Sentral ng Pilipinas, as the Commission on Elections may determine. At most, there was a mere alteration of the main function of the NPO by limiting the exclusivity of its printing responsibility to election forms.

8. ID.; ID.; ID.; PURSUANT TO SECTION 20 OF THE ADMINISTRATIVE CODE OF 1987, THE POWER OF THE PRESIDENT TO REORGANIZE THE EXECUTIVE BRANCH UNDER SECTION 21 INCLUDES SUCH POWERS AND FUNCTIONS THAT MAY BE PROVIDED FOR UNDER OTHER LAWS.— There is a view that the reorganization actions that the President may take with respect to agencies in the Office of the President are strictly limited to transfer of functions and offices as seemingly provided in Section 31 of the Administrative Code of 1987. However, Section 20, Chapter 7, Title I, Book III of the same Code significantly provides: Sec. 20. *Residual Powers.* — Unless Congress provides otherwise, the President shall exercise **such other powers and functions vested in the President which are provided for under the laws** and which are not specifically enumerated above, or which are not delegated by the President in accordance with law. Pursuant to Section 20, the power of

the President to reorganize the Executive Branch under Section 31 includes such powers and functions that may be provided for under other laws. To be sure, an inclusive and broad interpretation of the President's power to reorganize executive offices has been consistently supported by specific provisions in **general appropriations laws.**

9. ID.; ID.; ID.; PROVISIONS IN THE APPROPRIATIONS LAW RECOGNIZE THE POWER OF THE PRESIDENT TO REORGANIZE EVEN EXECUTIVE OFFICES ALREADY FUNDED BY THE APPROPRIATIONS ACT, INCLUDING THE POWER TO IMPLEMENT STRUCTURAL, FUNCTIONAL AND OPERATIONAL ADJUSTMENTS IN THE EXECUTIVE BUREAUCRACY AND, IN SO DOING, MODIFY OR REALIGN APPROPRIATIONS OF FUNDS AS MAY BE NECESSARY UNDER SUCH REORGANIZATION.—[T]he provisions in the appropriations law recognize the power of the President to reorganize even executive offices already funded by the said appropriations act, including the power to implement **structural, functional, and operational adjustments** in the executive bureaucracy and, in so doing, modify or realign appropriations of funds as may be necessary under such reorganization. Thus, insofar as petitioners protest the limitation of the NPO's appropriations to its own income under Executive Order No. 378, the same is statutorily authorized by the above provisions.

10. ID.; ID.; ID.; NOTHING OBJECTIONABLE IN THE PROVISION IN EXECUTIVE ORDER NO. 378 LIMITING THE APPROPRIATION OF THE NATIONAL PRINTING OFFICE TO ITS OWN INCOME.— The issuance of Executive Order No. 378 by President Arroyo is an exercise of a delegated legislative power granted by the aforementioned Section 31, Chapter 10, Title III, Book III of the Administrative Code of 1987, which provides for the continuing authority of the President to reorganize the Office of the President, "in order to achieve simplicity, economy and efficiency." This is a matter already well-entrenched in jurisprudence. The reorganization of such an office through executive or administrative order is also recognized in the Administrative Code of 1987. Sections 2 and 3, Chapter 2, Title I, Book III of the said Code. xxx To reiterate, we find nothing objectionable in the provision in Executive Order No. 378 limiting the appropriation of the NPO

to its own income. Beginning with *Larin* and in subsequent cases, the Court has noted certain provisions in the **general appropriations laws** as likewise reflecting the power of the President to reorganize executive offices or agencies even to the extent of modifying and realigning appropriations for that purpose.

11. ID.; ID.; ID.; EXECUTIVE ORDER NO. 378 IS WELL WITHIN THE PREROGATIVE OF THE PRESIDENT UNDER HER CONTINUING DELEGATED LEGISLATIVE POWER TO REORGANIZE HER OWN OFFICE.— Executive Order No. 378, which purports to institute necessary reforms in government in order to improve and upgrade efficiency in the delivery of public services by redefining the functions of the NPO and limiting its funding to its own income and to transform it into a self-reliant agency able to compete with the private sector, is well within the prerogative of President Arroyo under her continuing delegated legislative power to reorganize her own office. As pointed out in the separate concurring opinion of our learned colleague, Associate Justice Antonio T. Carpio, the objective behind Executive Order No. 378 is wholly consistent with the state policy contained in Republic Act No. 9184 or the Government Procurement Reform Act to encourage competitiveness by extending equal opportunity to private contracting parties who are eligible and qualified. To be very clear, this delegated legislative power to reorganize pertains only to the Office of the President and the departments, offices and agencies of the executive branch and does not include the Judiciary, the Legislature or the constitutionally-created or mandated bodies. Moreover, it must be stressed that the exercise by the President of the power to reorganize the executive department must be in accordance with the Constitution, relevant laws and prevailing jurisprudence.

12. ID.; ID.; ID.; EFFECT OF REORGANIZATION DONE IN GOOD FAITH WITH REGARD TO SECURITY OF TENURE.— [W]e are mindful of the previous pronouncement of this Court in *Dario v. Mison* that: **Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith.** As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of a dismissal) or separation actually occurs

because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the "abolition," which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid "abolition" takes place and whatever "abolition" is done, is void *ab initio*. There is an invalid "abolition" as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds. Stated alternatively, the presidential power to reorganize agencies and offices in the *executive* branch of government is subject to the condition that such reorganization is carried out in good faith. If the *reorganization* is done in good faith, the abolition of positions, which results in loss of security of tenure of affected government employees, would be valid. In *Buklod ng Kawaning EIIB v. Zamora*, we even observed that there was no such thing as an absolute right to hold office. Except those who hold constitutional offices, which provide for special immunity as regards salary and tenure, no one can be said to have any vested right to an office or salary.

13. ID.; ID.; ID.; PETITIONERS FAILED TO ALLEGE, MUCH LESS PROVE, SUFFICIENT FACTS TO SHOW THAT THE LIMITATION OF NATIONAL PRINTING OFFICE'S BUDGET TO ITS OWN INCOME WOULD INDEED LEAD TO THE ABOLITION OF THE POSITION, OR REMOVAL FROM OFFICE OF ANY EMPLOYEE.— This brings us to the second ground raised in the petition – that Executive Order No. 378, in allowing government agencies to secure their printing requirements from the private sector and in limiting the budget of the NPO to its income, will purportedly lead to the gradual abolition of the NPO and the loss of security of tenure of its present employees. In other words, petitioners avow that the reorganization of the NPO under Executive Order No. 378 is tainted with bad faith. The basic evidentiary rule is that he who asserts a fact or the affirmative of an issue has the burden of proving it. A careful review of the records will show that petitioners utterly failed to substantiate their claim. They failed to allege, much less prove, sufficient facts to show that the limitation of the NPO's budget to its own income would indeed lead to the abolition of the position, or removal from office, of any employee. Neither did petitioners present any shred of proof of their assertion that the changes in the functions

of the NPO were for political considerations that had nothing to do with improving the efficiency of, or encouraging operational economy in, the said agency. In sum, the Court finds that the petition failed to show any constitutional infirmity or grave abuse of discretion amounting to lack or excess of jurisdiction in President Arroyo's issuance of Executive Order No. 378.

CARPIO, *J., separate concurring opinion:*

1. POLITICAL LAW; ADMINISTRATIVE CODE OF 1987; EXECUTIVE ORDER NO. 378 EXCEEDS THE PARAMETERS OF SECTION 31 OF THE ADMINISTRATIVE CODE OF 1987.— Section 31 limits Executive discretion to reorganize *the Office of the President and the enumerated ancillary offices* along the following functional and structural lines: (1) *restructuring the internal organization* of the Office of the President *Proper* by *abolishing*, consolidating or merging *units* thereof or *transferring functions* from one unit to another; (2) *transferring any function* under the Office of the President to any other Department/Agency or vice versa; or (3) *transferring any agency* under the Office of the President to any other Department/Agency or vice versa. This listing is closed and admits of no other category of reorganization. Tested against these three narrow categories of reorganization, EO 378 fails to pass muster. EO 378 effects two changes to the National Printing Office (NPO): *first*, it reduces the NPO's exclusive printing function to cover election paraphernalia only, allowing private printing establishments to bid for the right to print government standard and accountable forms and *second*, it caps the NPO's annual appropriation to its income. Although EO 378's *narrowing* of the NPO's functions arguably falls under Section 31(1)'s ambit authorizing *abolition* of units, this power is limited to the Office of the President *Proper*, defined under the 1987 Administrative Code as consisting of "the Private Office, the Executive Office, the Common Staff Support System, and the President Special Assistants/Advisers System x x x." The NPO is *not* part of the Office of the President *Proper*, being an agency attached to the Office of the President, a bigger entity consisting "of the Office of the President Proper and the agencies under it." Thus, Section 31(1) is no basis to declare

that the President has the power to "*abolish* agencies under the *Office of the President*." Section 31(1) limits this power only to the Office of the President *Proper*. Further, insofar as the "Office of the President" is concerned, the President's reorganization powers are limited to *transferring* any *function* or any *agency* from that office to any department or agency and vice versa. No amount of etymological stretching can make *reduction of function* and *capping of budget* fit under the narrow concept of "*transferring* any function or any agency."

2. ID.; ID.; CASE OF *LARIN* AND ITS PROGENY CANNOT VALIDATE EO 378 BECAUSE ITS STATUTORY BASIS, PD 1416, IS AN UNDUE DELEGATION OF LEGISLATIVE POWER.— The cases the Decision cites furnish no bases to validate EO 378. The leading case in this area, *Larin v. Executive Secretary* (reiterated in *Buklod ng Kawaning EIIB v. Hon. Sec. Zamora* and *Tondo Medical Center Employees Association v. Court of Appeals)* relied on Section 20, Chapter 7, Book II of the Administrative Code of 1987 in relation to PD 1416. *Larin* and its progeny cannot validate EO 378 because its statutory basis, PD 1416, is an undue delegation of legislative power.

3. ID.; ID.; DESPITE THEIR EQUALLY BROAD AND UNDEFINED POWERS, NEITHER THE EXECUTIVE NOR THE JUDICIARY INHERENTLY POSSESSES THE POWER TO REORGANIZE ITS BUREAUCRACY.— It is an unquestioned attribute of the broad and undefined legislative power of Congress to fashion Philippine bureaucracy by creating (and thus, abolishing) public offices save for offices created by the Constitution. This power, including its ancillary to *reorganize*, is exercised by the other branches only as allowed by Congress under valid statutory delegation. Even then, the delegated power only *partakes* of the original legislative power as the other branches can only *implement* the legislature's will. Thus, despite their equally broad and undefined powers, neither the executive nor the judiciary *inherently* possesses the power to reorganize its bureaucracy.

4. ID.; ID.; THE SUBSEQUENT DELEGATION OF THE POWER TO LEGISLATE OFFENDS THE FUNDAMENTAL PRECEPT IN OUR SCHEME OF GOVERNMENT THAT DELEGATED POWER CANNOT AGAIN BE DELEGATED.— The term "national government" has an

established meaning in statutory and case law. Under the statute governing Philippine bureaucracy, the Administrative Code of 1987, "national government" refers to "the *entire machinery of the central government*, as distinguished from the different forms of local government." Jurisprudence has interpreted this provision of the Administrative Code to encompass "the three great departments: the executive, the legislative, and the judicial." By delegating to the Executive the "continuing authority to reorganize the administrative structure of the *National Government*" including the power to "create, abolish, group, consolidate, x x x or integrate" the "entities, agencies, instrumentalities, and units of the *National Government*," PD 1416, as amended, places under the Executive branch the vast – and undeniably legislative – power to constitute the entire Philippine Government in the guise of "reorganization." Capping the unprecedented siphoning of legislative power to the Executive, PD 1416, as amended, authorizes the Executive to "transfer appropriations" and "standardize salaries" in the national government. The authorization to "transfer appropriations" is a complete repugnancy to the constitutional proscription that "*No law* shall be passed authorizing any transfer of appropriations. x x x." On the other hand, the Constitution mandates that "*The Congress* shall provide for the standardization of compensation of government officials and employees, x x x." Indeed, Congress, with the Executive's acquiescence, has repeatedly exercised this *exclusive* power to standardize public sector employees' compensation by enacting a law to that effect and exempting classes of employees from its coverage. Thus, much like the invalidated Section 68 of the previous Revised Administrative Code delegating to the President the legislative power to create municipalities, PD 1416, as amended, delegates to the President that undefined legislative power to constitute the Philippine bureaucracy which the sovereign people of this polity delegated to Congress only. This subsequent delegation of the power to legislate offends the fundamental precept in our scheme of government that delegated power cannot again be delegated.

5. ID.; ID.; PD 1416, AS AMENDED, WITH ITS BLENDING OF LEGISLATIVE AND EXECUTIVE POWERS, IS A VESTIGE OF AN AUTOCRATIC ERA, TOTALLY ANACHRONISTIC, TO OUR PRESENT-DAY CONSTITUTIONAL DEMOCRACY.— The radical merger

of legislative and executive powers PD 1416 sanctions makes sense in a parliamentary system of merged executive and legislative branches. Indeed, PD 1416, issued in 1979, three years after Amendment No. 6 vested legislative power to then President Marcos, was *precisely* meant to operate within such system, as declared in PD 1416's last "Whereas" clause: "WHEREAS, the transition towards the *parliamentary form of government* will necessitate flexibility in the organization of the national government[.]" When the Filipino people ratified the 1987 Constitution on 2 February 1987, restoring the operation of the original tri-branch system of government, PD 1416's paradigm of merged executive and legislative powers ceased to have relevance. Although then President Aquino, by her revolutionary ascension to the Presidency, held and exercised these two powers under the Provisional Constitution, her legislative powers ceased when the post-EDSA Congress convened on 27 July 1987 following the 1987 Constitution's mandate that "The incumbent President shall continue to exercise legislative powers until the first Congress is convened." Thus, even though the demands of modernity and the imperatives of checks and balances may have blurred the demarcation lines among the three branches, we remain a government of separated powers, rooted in the conviction that division – not unity – of powers prevents tyranny. PD 1416, as amended, with its blending of legislative and executive powers, is a vestige of an autocratic era, totally anachronistic to our present-day constitutional democracy.

6. ID.; ID.; DOCTRINE OF PRESIDENTIAL CONTROL OVER EXECUTIVE DEPARTMENT FURNISHES NO BASIS TO VALIDATE EO 378.— The doctrine of presidential control over the executive department likewise furnishes no basis to uphold the validity of EO 378. As distinguished from supervision, the doctrine of control finds application in altering *acts* of the President's subordinates. It does not sanction structural or functional changes even within the executive department.

7. ID.; ID.; EO 378 VALID FOR IMPLEMENTING RA 9184.— RA 9184 mandates the conduct of competitive bidding in all the procurement activities of the government including the acquisition of "items, supplies, materials, and general support services x x x which may be needed in the transaction of the public businesses or in the pursuit of any government x x x

activity" save for limited transactions. By opening government's procurement of standard and accountable forms to competitive bidding (except for documents crucial to the conduct of clean elections which has to be printed solely by government), EO 378 merely implements RA 9184's principle of promoting "competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding." Indeed, EO 378 is not so much a "reorganization" move involving realignment of offices and personnel movement as an issuance to "ensure that the government benefits from the best services available from the market at the best price." EO 378's capping of NPO's budget to its income is a logical by-product of opening NPO's operations to the private sector — with the entry of market forces, there will expectedly be a decrease in its workload, lowering its funding needs.

APPEARANCES OF COUNSEL

Engelberto A. Farol for petitioners.
The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The present controversy arose from a Petition for *Certiorari* and prohibition challenging the constitutionality of Executive Order No. 378 dated October 25, 2004, issued by President Gloria Macapagal Arroyo (President Arroyo). Petitioners characterize their action as a class suit filed on their own behalf and on behalf of all their co-employees at the National Printing Office (NPO).

The NPO was formed on July 25, 1987, during the term of former President Corazon C. Aquino (President Aquino), by virtue of Executive Order No. 285[1] which provided, among

[1] ABOLISHING THE GENERAL SERVICES ADMINISTRATION AND TRANSFERRING ITS FUNCTIONS TO APPROPRIATE GOVERNMENT AGENCIES.

others, the creation of the NPO from the merger of the Government Printing Office and the relevant printing units of the Philippine Information Agency (PIA). Section 6 of Executive Order No. 285 reads:

SECTION 6. Creation of the National Printing Office. — There is hereby created a National Printing Office out of the merger of the Government Printing Office and the relevant printing units of the Philippine Information Agency. The Office shall have exclusive printing jurisdiction over the following:

a. Printing, binding and distribution of all standard and accountable forms of national, provincial, city and municipal governments, including government corporations;

b. Printing of officials ballots;

c. Printing of public documents such as the Official Gazette, General Appropriations Act, Philippine Reports, and development information materials of the Philippine Information Agency.

The Office may also accept other government printing jobs, including government publications, aside from those enumerated above, but not in an exclusive basis.

The details of the organization, powers, functions, authorities, and related management aspects of the Office shall be provided in the implementing details which shall be prepared and promulgated in accordance with Section II of this Executive Order.

The Office shall be attached to the Philippine Information Agency.

On October 25, 2004, President Arroyo issued the herein assailed Executive Order No. 378, amending Section 6 of Executive Order No. 285 by, *inter alia*, removing the exclusive jurisdiction of the NPO over the printing services requirements of government agencies and instrumentalities. The pertinent portions of Executive Order No. 378, in turn, provide:

SECTION 1. The NPO **shall continue to provide printing services to government agencies and instrumentalities as mandated by law. However, it shall no longer enjoy exclusive jurisdiction over the printing services requirements of the government over standard and accountable forms**. **It shall have**

to compete with the private sector, except in the printing of election paraphernalia which could be shared with the Bangko Sentral ng Pilipinas, upon the discretion of the Commission on Elections consistent with the provisions of the Election Code of 1987.

SECTION 2. Government agencies/instrumentalities may source printing services outside NPO provided that:

2.1 The printing services to be provided by the private sector is superior in quality and at a lower cost than what is offered by the NPO; and

2.2 The private printing provider is flexible in terms of meeting the target completion time of the government agency.

SECTION 3. In the exercise of its functions, the amount to be appropriated for the programs, projects and activities of the NPO in the General Appropriations Act (GAA) shall be limited to its income without additional financial support from the government. (Emphases and underscoring supplied.)

Pursuant to Executive Order No. 378, government agencies and instrumentalities are allowed to source their printing services from the private sector through competitive bidding, subject to the condition that the services offered by the private supplier be of superior quality and lower in cost compared to what was offered by the NPO. Executive Order No. 378 also limited NPO's appropriation in the General Appropriations Act to its income.

Perceiving Executive Order No. 378 as a threat to their security of tenure as employees of the NPO, petitioners now challenge its constitutionality, contending that: (1) it is beyond the executive powers of President Arroyo to amend or repeal Executive Order No. 285 issued by former President Aquino when the latter still exercised legislative powers; and (2) Executive Order No. 378 violates petitioners' security of tenure, because it paves the way for the gradual abolition of the NPO.

We dismiss the petition.

Before proceeding to resolve the substantive issues, the Court must first delve into a procedural matter. Since petitioners

instituted this case as a class suit, the Court, thus, must first determine if the petition indeed qualifies as one. In *Board of Optometry v. Colet*,[2] we held that "[c]ourts must exercise utmost caution before allowing a class suit, which is the exception to the requirement of joinder of all indispensable parties. For while no difficulty may arise if the decision secured is favorable to the plaintiffs, a quandary would result if the decision were otherwise as those who were deemed impleaded by their self-appointed representatives would certainly claim denial of due process."

Section 12, Rule 3 of the Rules of Court defines a class suit, as follows:

> Sec. 12. *Class suit*. — When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

From the foregoing definition, the requisites of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.

In *Mathay v. The Consolidated Bank and Trust Company*,[3] the Court held that:

> An action does not become a class suit merely because it is designated as such in the pleadings. Whether the suit is or is not a class suit depends upon the attending facts, and **the complaint, or other pleading initiating the class action should allege** the existence of the necessary facts, to wit, the existence of a subject matter of

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[2] 328 Phil. 1187, 1204 (1996).

[3] 157 Phil. 551, 563-564 (1974).

common interest, and the existence of a class and **the number of persons in the alleged class, in order that the court might be enabled to determine whether the members of the class are so numerous as to make it impracticable to bring them all before the court, to contrast the number appearing on the record with the number in the class and to determine whether claimants on record adequately represent the class and the subject matter of general or common interest**. (Emphases ours.)

Here, the petition failed to state the number of NPO employees who would be affected by the assailed Executive Order and who were allegedly represented by petitioners. It was the Solicitor General, as counsel for respondents, who pointed out that there were about 549 employees in the NPO.[4] The 67 petitioners undeniably comprised a small fraction of the NPO employees whom they claimed to represent. Subsequently, 32 of the original petitioners executed an Affidavit of Desistance, while one signed a letter denying ever signing the petition,[5] ostensibly reducing the number of petitioners to 34. We note that counsel for the petitioners challenged the validity of the desistance or withdrawal of some of the petitioners and insinuated that such desistance was due to pressure from people "close to the seat of power."[6] Still, even if we were to disregard the affidavit of desistance filed by some of the petitioners, it is highly doubtful that a sufficient, representative number of NPO employees have instituted this purported class suit. A perusal of the petition itself would show that of the 67 petitioners who signed the Verification/Certification of Non-Forum Shopping, only 20 petitioners were in fact mentioned in the *jurat* as having duly subscribed the petition before the notary public. In other words, only 20 petitioners effectively instituted the present case.

Indeed, in *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*,[7] we observed that an element of a

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[4] Respondents' Comment on the Manifestation of Desistance, *rollo*, p. 86.

[5] *Id.* at 30-32.

[6] *Id.* at 44.

[7] 444 Phil. 230, 257 (2003); citing 59 Am Jur 2d, 456 (1977).

class suit or representative suit is the **adequacy of representation**. In determining the question of fair and adequate representation of members of a class, the court must consider (a) whether the interest of the named party is coextensive with the interest of the other members of the class; (b) the proportion of those made a party, as it so bears, to the total membership of the class; and (c) any other factor bearing on the ability of the named party to speak for the rest of the class.

Previously, we held in *Ibañes v. Roman Catholic Church*[8] that where the interests of the plaintiffs and the other members of the class they seek to represent are diametrically opposed, the class suit will not prosper.

It is worth mentioning that a Manifestation of Desistance,[9] to which the previously mentioned Affidavit of Desistance[10] was attached, was filed by the President of the National Printing Office Workers Association (NAPOWA). The said manifestation expressed NAPOWA's opposition to the filing of the instant petition in any court. Even if we take into account the contention of petitioners' counsel that the NAPOWA President had no legal standing to file such manifestation, the said pleading is a clear indication that there is a divergence of opinions and views among the members of the class sought to be represented, and not all are in favor of filing the present suit. There is here an apparent conflict between petitioners' interests and those of the persons whom they claim to represent. Since it cannot be said that petitioners sufficiently represent the interests of the entire class, the instant case cannot be properly treated as a class suit.

As to the merits of the case, the petition raises two main grounds to assail the constitutionality of Executive Order No. 378:

First, it is contended that President Arroyo cannot amend or repeal Executive Order No. 285 by the mere issuance of another

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[8] 12 Phil. 227, 241 (1908).

[9] *Rollo*, p. 29.

[10] *Id.* at 30-32.

executive order (Executive Order No. 378). Petitioners maintain that former President Aquino's Executive Order No. 285 is a legislative enactment, as the same was issued while President Aquino still had legislative powers under the Freedom Constitution;[11] thus, only Congress through legislation can validly amend Executive Order No. 285.

Second, petitioners maintain that the issuance of Executive Order No. 378 would lead to the eventual abolition of the NPO and would violate the security of tenure of NPO employees.

Anent the first ground raised in the petition, we find the same patently without merit.

It is a well-settled principle in jurisprudence that the President has the power to reorganize the offices and agencies in the executive department in line with the President's constitutionally granted power of control over executive offices and by virtue of previous delegation of the legislative power to reorganize executive offices under existing statutes.

In *Buklod ng Kawaning EIIB v. Zamora*,[12] the Court pointed out that Executive Order No. 292 or the Administrative Code of 1987 gives the President continuing authority to reorganize and redefine the functions of the Office of the President. Section 31, Chapter 10, Title III, Book III of the said Code, is explicit:

> Sec. 31. Continuing Authority of the President to Reorganize his Office. — The President**, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President**. For this purpose, he may take any of the following actions:

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[11] DECLARING NATIONAL POLICY TO IMPLEMENT THE REFORMS MANDATED BY THE PEOPLE, PROTECTING THEIR BASIC RIGHTS, ADOPTING A PROVISIONAL CONSTITUTION, AND PROVIDING FOR AN ORDERLY TRANSITION TO A GOVERNMENT UNDER A NEW CONSTITUTION.

[12] 413 Phil. 281 (2001).

(1) **Restructure the internal organization of the Office of the President Proper**, including the immediate Offices, the President Special Assistants/Advisers System and the Common Staff Support System, **by abolishing, consolidating or merging units thereof or transferring functions from one unit to another**;

(2) **Transfer any function under the Office of the President to any other Department or Agency** as well as **transfer functions to the Office of the President** from other Departments and Agencies; and

(3) **Transfer any agency under the Office of the President to any other department or agency** as well as **transfer agencies to the Office of the President** from other Departments or agencies. (Emphases ours.)

Interpreting the foregoing provision, we held in *Buklod ng Kawaning EIIB*, thus:

But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power – that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. **In *Canonizado v. Aguirre* [323 SCRA 312 (2000)], we ruled that reorganization "*involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.*" It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them.** The EIIB is a bureau attached to the Department of Finance. It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize.[13] (Emphasis ours.)

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[13] *Id.* at 294-295.

It is undisputed that the NPO, as an agency that is part of the Office of the Press Secretary (which in various times has been an agency directly attached to the Office of the Press Secretary or as an agency under the Philippine Information Agency), is part of the Office of the President.[14]

Pertinent to the case at bar, Section 31 of the Administrative Code of 1987 quoted above authorizes the President (a) to **restructure** the internal organization of the Office of the President Proper, including the immediate Offices, the President Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another, and (b) to transfer functions or offices from the Office of the President to any other Department or Agency in the Executive Branch, and vice versa.

Concomitant to such power to abolish, merge or consolidate offices in the Office of the President Proper and to transfer functions/offices not only among the offices in the Office of President Proper but also the rest of the Office of the President and the Executive Branch, the President implicitly has the power to effect less radical or less substantive changes to the functional and internal structure of the Office of the President, including the modification of functions of such executive agencies as the exigencies of the service may require.

In the case at bar, there was neither an abolition of the NPO nor a removal of any of its functions to be transferred to another agency. Under the assailed Executive Order No. 378, the NPO remains the main printing arm of the government for all kinds

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[14] Section 23, Chapter 8, Title II, Book III of the Administrative Code of 1987 provides:

> Section 23. The Agencies under the Office of the President. — The agencies under the Office of the President refer to those offices placed under the chairmanship of the President, those under the supervision and control of the President, those under the administrative supervision of the Office of the President, those attached to it for policy and program coordination, and those that are not placed by law or order creating them under any specific department.

of government forms and publications but in the interest of greater economy and encouraging efficiency and profitability, it must now compete with the private sector for certain government printing jobs, with the exception of election paraphernalia which remains the exclusive responsibility of the NPO, together with the Bangko Sentral ng Pilipinas, as the Commission on Elections may determine. At most, there was a mere alteration of the main function of the NPO by limiting the exclusivity of its printing responsibility to election forms.[15]

There is a view that the reorganization actions that the President may take with respect to agencies in the Office of the President are strictly limited to transfer of functions and offices as seemingly provided in Section 31 of the Administrative Code of 1987.

However, Section 20, Chapter 7, Title I, Book III of the same Code significantly provides:

> Sec. 20. *Residual Powers.* — Unless Congress provides otherwise, the President shall exercise **such other powers and functions vested in the President which are provided for under the laws** and which are not specifically enumerated above, or which are not delegated by the President in accordance with law. (Emphasis ours.)

Pursuant to Section 20, the power of the President to reorganize the Executive Branch under Section 31 includes such powers and functions that may be provided for under other laws. To be sure, an inclusive and broad interpretation of the President's

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[15] Subsequently, in order to harmonize Executive Order No. 378 with other executive issuances and laws relating to the printing of government forms, President Arroyo, through the Executive Secretary, issued Memorandum Circular No. 180 (dated August 13, 2009) to clarify the printing responsibility of the NPO. The said issuance provided that the NPO had exclusive printing jurisdiction over standard and accountable forms with money value and specialized accountable forms, which may be contracted out to the NPO's accredited private security printers under the guidelines therein provided. It also affirmed the NPO's exclusive jurisdiction over the printing of election forms and public documents, such as the Official Gazette, General Appropriations Act, Philippine Reports and development information materials of the Philippine Information Agency. It is only with respect to other standard accountable forms and other government printing jobs that private providers may be engaged in accordance with prescribed guidelines and upon written waiver issued by the NPO.

power to reorganize executive offices has been consistently supported by specific provisions in **general appropriations laws.**

In the oft-cited *Larin v. Executive Secretary*,[16] the Court likewise adverted to certain provisions of Republic Act No. 7645, the general appropriations law for 1993, as among the statutory bases for the President's power to reorganize executive agencies, to wit:

> Section 48 of R.A. 7645 provides that:
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> "Sec. 48. Scaling Down and Phase Out of Activities of Agencies Within the Executive Branch. — The heads of departments, bureaus and offices and agencies are hereby directed to identify their respective activities which are no longer essential in the delivery of public services and which may be scaled down, phased out or abolished, subject to civil [service] rules and regulations. x x x. Actual scaling down, phasing out or abolition of the activities shall be effected pursuant to Circulars or Orders issued for the purpose by the Office of the President."

Said provision clearly mentions the acts of "scaling down, phasing out and abolition" of offices only and does not cover the creation of offices or transfer of functions. Nevertheless, the act of creating and decentralizing is included in the subsequent provision of Section 62, which provides that:

> "Sec. 62. Unauthorized organizational changes. — Unless otherwise created by law or directed by the President of the Philippines, no organizational unit or changes in key positions in any department or agency shall be authorized in their respective organization structures and be funded from appropriations by this Act."

The foregoing provision evidently shows that the President is authorized to effect organizational changes including the creation of offices in the department or agency concerned.

The contention of petitioner that the two provisions are riders deserves scant consideration. Well settled is the rule that every law

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[16] G.R. No. 112745, October 16, 1997, 280 SCRA 713.

has in its favor the presumption of constitutionality. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.[17] (Emphases ours)

Buklod ng Kawaning EIIB v. Zamora,[18] where the Court upheld as valid then President Joseph Estrada's Executive Order No. 191 "deactivating" the Economic Intelligence and Investigation Bureau (EIIB) of the Department of Finance, hewed closely to the reasoning in *Larin.* The Court, among others, also traced from the General Appropriations Act[19] the President's authority to effect organizational changes in the department or agency under the executive structure, thus:

> We adhere to the precedent or ruling in *Larin* that this provision recognizes the authority of the President to effect organizational changes in the department or agency under the executive structure. Such a ruling further finds support in Section 78 of Republic Act No. 8760. Under this law, the heads of departments, bureaus, offices and agencies and other entities in the Executive Branch are directed (a) to conduct a comprehensive review of their respective mandates, missions, objectives, functions, programs, projects, activities and systems and procedures; (b) identify activities which are no longer essential in the delivery of public services and which may be scaled down, phased-out or abolished; and (c) **adopt measures that will result in the streamlined organization and improved overall performance of their respective agencies**. Section 78 ends up with the mandate that the actual streamlining and productivity improvement in agency organization and operation shall be effected pursuant to Circulars or Orders issued for the purpose by the Office of the President. x x x.[20] (Emphasis ours)

Notably, in the present case, the 2003 General Appropriations Act, which was reenacted in 2004 (the year of the issuance of Executive Order No. 378), likewise gave the President the authority

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[17] *Id.* at 729-730.

[18] *Supra* note 12.

[19] Republic Act 8760, signed into law on February 16, 2000.

[20] *Buklod ng Kawaning EIIB v. Zamora, supra* note 12 at 293-294.

to effect a wide variety of organizational changes in any department or agency in the Executive Branch. Sections 77 and 78 of said Act provides:

Section 77. Organized Changes. — **Unless otherwise provided by law or directed by the President of the Philippines,** no changes in key positions or organizational units in any department or agency shall be authorized in their respective organizational structures and funded from appropriations provided by this Act.

Section 78. Institutional Strengthening and Productivity Improvement in Agency Organization and Operations and Implementation of Organization/Reorganization Mandated by Law. The Government **shall adopt institutional strengthening and productivity improvement** measures to improve service delivery and enhance productivity in the government, **as directed by the President** of the Philippines. The heads of departments, bureaus, offices, agencies, and other entities of **the Executive Branch** shall accordingly conduct a comprehensive review of their respective mandates, missions, objectives, functions, programs, projects, activities and systems and procedures; identify areas where improvements are necessary; and **implement corresponding structural, functional and operational adjustments that will result in streamlined organization and operations and improved performance and productivity**: PROVIDED, That actual streamlining and productivity improvements in agency organization and operations, as authorized by the President of the Philippines for the purpose, including the utilization of savings generated from such activities, shall be in accordance with the rules and regulations to be issued by the DBM, upon consultation with the Presidential Committee on Effective Governance: PROVIDED, FURTHER, That **in the implementation of organizations/reorganizations, or specific changes in agency structure, functions and operations as a result of institutional strengthening or as mandated by law, the appropriation, including the functions, projects, purposes and activities of agencies concerned may be realigned as may be necessary**: PROVIDED, FINALLY, That any unexpended balances or savings in appropriations may be made available for payment of retirement gratuities and separation benefits to affected personnel, as authorized under existing laws. (Emphases and underscoring ours.)

Implicitly, the aforequoted provisions in the appropriations law recognize the power of the President to reorganize even executive offices already funded by the said appropriations act, including the power to implement **structural, functional, and operational adjustments** in the executive bureaucracy and, in so doing, modify or realign appropriations of funds as may be necessary under such reorganization. Thus, insofar as petitioners protest the limitation of the NPO's appropriations to its own income under Executive Order No. 378, the same is statutorily authorized by the above provisions.

In the 2003 case of *Bagaoisan v. National Tobacco Administration*,[21] we upheld the "streamlining" of the National Tobacco Administration through a reduction of its personnel and deemed the same as included in the power of the President to reorganize executive offices granted under the laws, notwithstanding that such streamlining neither involved an abolition nor a transfer of functions of an office. To quote the relevant portion of that decision:

> In the recent case of *Rosa Ligaya C. Domingo, et al. vs. Hon. Ronaldo D. Zamora, in his capacity as the Executive Secretary, et al.*, this Court has had occasion to also delve on the President's power to reorganize the Office of the President under Section 31(2) and (3) of Executive Order No. 292 and the power to reorganize the Office of the President *Proper*. x x x
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> x x x x x x x x x
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> The first sentence of the law is an express grant to the President of a continuing authority to reorganize the administrative structure of the Office of the President. **The succeeding numbered paragraphs are not in the nature of *provisos* that unduly limit the aim and scope of the grant to the President of the power to reorganize but are to be viewed in consonance therewith.** Section 31(1) of Executive Order No. 292 specifically refers to the President's power to restructure the internal organization of the Office of the President *Proper*, by abolishing, consolidating or merging units hereof or transferring functions from one unit to another, while Section 31(2) and (3) concern executive offices outside

[21] 455 Phil. 761 (2003).

the Office of the President *Proper* allowing the President to transfer any function under the Office of the President to any other Department or Agency and *vice-versa*, and the transfer of any agency under the Office of the President to any other department or agency and *vice-versa*.

In the present instance, involving neither an abolition nor transfer of offices, the assailed action is a mere reorganization under the general provisions of the law consisting mainly of streamlining the NTA in the interest of simplicity, economy and efficiency. It is an act well within the authority of the President motivated and carried out, according to the findings of the appellate court, in good faith, a factual assessment that this Court could only but accept.[22] (Emphases and underscoring supplied.)

In the more recent case of *Tondo Medical Center Employees Association v. Court of Appeals*,[23] which involved **a structural and functional reorganization of the Department of Health under an executive order**, we reiterated the principle that the power of the President to reorganize agencies under the executive department by executive or administrative order is constitutionally and statutorily recognized. We held in that case:

This Court has already ruled in a number of cases that the President may, by executive or administrative order, direct the reorganization of government entities under the Executive Department. This is also sanctioned under the Constitution, as well as other statutes.

Section 17, Article VII of the 1987 Constitution, clearly states: "[T]he president shall have **control** of **all executive departments, bureaus and offices."** Section 31, Book III, Chapter 10 of Executive Order No. 292, also known as the Administrative Code of 1987 reads:

> SEC. 31. Continuing Authority of the President to Reorganize his Office — The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President.

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[22] *Id.* at 775-772.

[23] G.R. No. 167324, July 17, 2007, 527 SCRA 746.

For this purpose, he may take any of the following actions:

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In *Domingo v. Zamora* [445 Phil. 7 (2003)], this Court explained the rationale behind the President's continuing authority under the Administrative Code to reorganize the administrative structure of the Office of the President. **The law grants the President the power to reorganize the Office of the President in recognition of the recurring need of every President to reorganize his or her office "to achieve simplicity, economy and efficiency."** To remain effective and efficient, it must be capable of being shaped and reshaped by the President in the manner the Chief Executive deems fit to carry out presidential directives and policies.

The Administrative Code provides that the Office of the President consists of the Office of the President Proper and the agencies under it. The agencies under the Office of the President are identified in Section 23, Chapter 8, Title II of the Administrative Code:

> Sec. 23. *The Agencies under the Office of the President.*— The agencies under the Office of the President refer to those offices placed under the chairmanship of the President, **those under the supervision and control of the President**, those under the administrative supervision of the Office of the President, those attached to it for policy and program coordination, and those that are not placed by law or order creating them under any specific department.

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The power of the President to reorganize the executive department is **likewise recognized in general appropriations laws.** x x x.

x x x x x x x x x

Clearly, Executive Order No. 102 is well within the constitutional power of the President to issue. **The President did not usurp any legislative prerogative** in issuing Executive Order No. 102. **It is an exercise of the President's constitutional power of control over the executive department, supported by the provisions of the Administrative Code, recognized by other statutes, and consistently affirmed by this Court.**[24] (Emphases supplied.)

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[24] *Id.* at 766-770.

Subsequently, we ruled in *Anak Mindanao Party-List Group v. Executive Secretary*[25] that:

> The Constitution's express grant of the power of control in the President justifies an executive action to carry out reorganization measures under a broad authority of law.
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> In enacting a statute, the legislature is presumed to have deliberated with full knowledge of all existing laws and jurisprudence on the subject. It is thus reasonable to conclude that in passing a statute which places an agency under the Office of the President, it was in accordance with existing laws and jurisprudence on the President's power to reorganize.
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> In establishing an executive department, bureau or office, the legislature necessarily ordains an executive agency's position in the scheme of administrative structure. Such determination is primary, but subject to the President's continuing authority to reorganize the administrative structure. As far as bureaus, agencies or offices in the executive department are concerned, the power of control may justify the President to deactivate the functions of a particular office. Or a law may expressly grant the President the broad authority to carry out reorganization measures. The Administrative Code of 1987 is one such law.[26]

The issuance of Executive Order No. 378 by President Arroyo is an exercise of a delegated legislative power granted by the aforementioned Section 31, Chapter 10, Title III, Book III of the Administrative Code of 1987, which provides for the continuing authority of the President to reorganize the Office of the President, "in order to achieve simplicity, economy and efficiency." This is a matter already well-entrenched in jurisprudence. The reorganization of such an office through executive or administrative order is also recognized in the Administrative Code of 1987. Sections 2 and 3, Chapter 2, Title I, Book III of the said Code provide:

> Sec. 2. Executive Orders. — **Acts of the President** providing for rules of a general or permanent character **in implementation**

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[25] G.R. No. 166052, August 29, 2007, 531 SCRA 583.

[26] *Id.* at 596.

or execution of constitutional or statutory powers shall be promulgated in **executive orders**.

Sec. 3. Administrative Orders. — **Acts of the President** which relate to particular aspects of governmental operations **in pursuance of his duties as administrative head** shall be promulgated in **administrative orders**. (Emphases supplied.)

To reiterate, we find nothing objectionable in the provision in Executive Order No. 378 limiting the appropriation of the NPO to its own income. Beginning with *Larin* and in subsequent cases, the Court has noted certain provisions in the **general appropriations laws** as likewise reflecting the power of the President to reorganize executive offices or agencies even to the extent of modifying and realigning appropriations for that purpose.

Petitioners' contention that the issuance of Executive Order No. 378 is an invalid exercise of legislative power on the part of the President has no legal leg to stand on.

In all, Executive Order No. 378, which purports to institute necessary reforms in government in order to improve and upgrade efficiency in the delivery of public services by redefining the functions of the NPO and limiting its funding to its own income and to transform it into a self-reliant agency able to compete with the private sector, is well within the prerogative of President Arroyo under her continuing delegated legislative power to reorganize her own office. As pointed out in the separate concurring opinion of our learned colleague, Associate Justice Antonio T. Carpio, the objective behind Executive Order No. 378 is wholly consistent with the state policy contained in Republic Act No. 9184 or the Government Procurement Reform Act to encourage competitiveness by extending equal opportunity to private contracting parties who are eligible and qualified.[27]

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[27] It is, however, highly debatable whether Executive Order No. 378 is a mere implementation of the Government Procurement Reform Act, as Justice Carpio proposes, since there is nothing in the said statute that authorizes modification of the functions or appropriations of an executive office or agency.

To be very clear, this delegated legislative power to reorganize pertains only to the Office of the President and the departments, offices and agencies of the executive branch and does not include the Judiciary, the Legislature or the constitutionally-created or mandated bodies. Moreover, it must be stressed that the exercise by the President of the power to reorganize the executive department must be in accordance with the Constitution, relevant laws and prevailing jurisprudence.

In this regard, we are mindful of the previous pronouncement of this Court in *Dario v. Mison*[28] that:

> **Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith.** As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of a dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the "abolition," which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid "abolition" takes place and whatever "abolition" is done, is void *ab initio*. There is an invalid "abolition" as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds. (Emphasis ours.)

Stated alternatively, the presidential power to reorganize agencies and offices in the *executive* branch of government is subject to the condition that such reorganization is carried out in good faith.

If the *reorganization* is done in good faith, the abolition of positions, which results in loss of security of tenure of affected government employees, would be valid. In *Buklod ng Kawaning EIIB v. Zamora*,[29] we even observed that there was no such thing as an absolute right to hold office. Except those who

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[28] G.R. Nos. 81954, 81967, 82023, 83737, 85310, 85335 and 86241, August 8, 1989, 176 SCRA 84, 127.

[29] *Supra* note 12.

hold constitutional offices, which provide for special immunity as regards salary and tenure, no one can be said to have any vested right to an office or salary.[30]

This brings us to the second ground raised in the petition – that Executive Order No. 378, in allowing government agencies to secure their printing requirements from the private sector and in limiting the budget of the NPO to its income, will purportedly lead to the gradual abolition of the NPO and the loss of security of tenure of its present employees. In other words, petitioners avow that the reorganization of the NPO under Executive Order No. 378 is tainted with bad faith. The basic evidentiary rule is that he who asserts a fact or the affirmative of an issue has the burden of proving it.[31]

A careful review of the records will show that petitioners utterly failed to substantiate their claim. They failed to allege, much less prove, sufficient facts to show that the limitation of the NPO's budget to its own income would indeed lead to the abolition of the position, or removal from office, of any employee. Neither did petitioners present any shred of proof of their assertion that the changes in the functions of the NPO were for political considerations that had nothing to do with improving the efficiency of, or encouraging operational economy in, the said agency.

In sum, the Court finds that the petition failed to show any constitutional infirmity or grave abuse of discretion amounting to lack or excess of jurisdiction in President Arroyo's issuance of Executive Order No. 378.

WHEREFORE, the petition is hereby *DISMISSED* and the prayer for a Temporary Restraining Order and/or a Writ of Preliminary Injunction is hereby *DENIED*. No costs.

SO ORDERED.

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[30] *Id*.

[31] *Eureka Personnel & Management Services, Inc. v. Valencia,* G.R. No. 159358, July 15, 2009, citing *Republic v. Orbecido III,* G.R. No. 154380, October 5, 2005, 472 SCRA 114; *Noceda v. Court of Appeals*, 372 Phil. 383 (1999); *Luxuria Homes, Inc. v. Court of Appeals,* 361 Phil. 989 (1999).

Puno, C.J., Corona, Carpio Morales, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Carpio, J., see separate concurring opinion.

Abad, J., on official leave.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

I concur in the result that Executive Order No. 378 (EO 378) is a valid Presidential issuance, but not because it implements Section 31, Chapter 10, Book II of the Administrative Code of 1987[1] (Section 31) or that it is sanctioned by case law anchored on Presidential Decree No. 1416 (PD 1416), but because EO 378 merely implements Republic Act No. 9184 (RA 9184)[2] regulating government procurement activities.

EO 378 Exceeds the Parameters of Section 31

Section 31, an executive legislation,[3] grants to the executive a *narrow* power to reorganize ringed with limitations on two fronts: (1) the branch of the government covered and (2) the scope of authority delegated:

> *Continuing Authority of the President to Reorganize* ***his Office***. — The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

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[1] Executive Order No. 292.

[2] The Government Procurement Reform Act.

[3] EO 292 was enacted by then President Aquino on 25 July 1987 in the exercise of her legislative power under Section 1, Article II of the Provisional Constitution.

(1) **Restructure the internal organization of the Office of the President Proper**, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by *abolishing*, consolidating or merging *units* thereof or *transferring functions* from one unit to another;

(2) **Transfer any function under the Office of the President to any other Department or Agency** as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) **Transfer any agency under the Office of the President to any other department** or agency as well as transfer agencies to the Office of the President from other departments or agencies. (Emphasis supplied)

Section 31 limits Executive discretion to reorganize *the Office of the President and the enumerated ancillary offices* along the following functional and structural lines: (1) *restructuring the internal organization* of the Office of the President *Proper* by *abolishing*, consolidating or merging *units* thereof or *transferring functions* from one unit to another; (2) *transferring any function* under the Office of the President to any other Department/Agency or vice versa; or (3) *transferring any agency* under the Office of the President to any other Department/Agency or vice versa. This listing is closed and admits of no other category of reorganization.

Tested against these three narrow categories of reorganization, EO 378 fails to pass muster. EO 378 effects two changes to the National Printing Office (NPO): *first*, it reduces the NPO's exclusive printing function to cover election paraphernalia only, allowing private printing establishments to bid for the right to print government standard and accountable forms and *second*, it caps the NPO's annual appropriation to its income. Although EO 378's *narrowing* of the NPO's functions arguably falls under Section 31(1)'s ambit authorizing *abolition* of units, this power is limited to the Office of the President *Proper*, defined under the 1987 Administrative Code as consisting of "the Private Office, the Executive Office, the Common Staff Support System, and

the President Special Assistants/Advisers System x x x."[4] The NPO is *not* part of the Office of the President *Proper*, being an agency attached to the Office of the President, a bigger entity consisting "of the Office of the President Proper and the agencies under it."[5] Thus, Section 31(1) is no basis to declare that the President has the power to "*abolish* agencies under the *Office of the President*."[6] Section 31(1) limits this power only to the Office of the President *Proper*.

Further, insofar as the "Office of the President" is concerned, the President's reorganization powers are limited to *transferring* any *function* or any *agency* from that office to any department or agency and vice versa. No amount of etymological stretching can make *reduction of function* and *capping of budget* fit under the narrow concept of "*transferring* any function or any agency."

Case Law Cited No Authority to Validate EO 378

The cases the Decision cites furnish no bases to validate EO 378. The leading case in this area, *Larin v. Executive Secretary*[7] (reiterated in *Buklod ng Kawaning EIIB v. Hon.*

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[4] Section 22, Chapter 8, Title II, Book III of the Administrative Code of 1987 provides:

Office of the President Proper. — (1) The Office of the President Proper shall consist of the Private Office, the Executive Office, the Common Staff Support System, and the Presidential Special Assistants/Advisers System;

(2) The Executive Office refers to the Offices of the Executive Secretary, Deputy Executive Secretaries and Assistant Executive Secretaries;

(3) The Common Staff Support System embraces the offices or units under the general categories of development and management, general government administration and internal administration; and

(4) The President Special Assistants/Advisers System includes such special assistants or advisers as may be needed by the President.

[5] Section 21, Chapter 8, Title II, Book III of the Administrative Code of 1987 provides: "*Organization*. The Office of the President shall consist of the Office of the President Proper and the agencies under it."

[6] Decision, p. 11.

[7] 345 Phil. 962 (1997).

Sec. Zamora[8] and *Tondo Medical Center Employees Association v. Court of Appeals*[9]) relied on Section 20, Chapter 7, Book II of the Administrative Code of 1987 in relation to PD 1416:

> Another legal basis of E.O. No. 132 is *Section 20*, Book III of E.O. No. 292 which states:
>
> > "Sec. 20. Residual Powers. — Unless Congress provides otherwise, the President shall exercise *such other powers and functions vested in the President which are provided for under the laws* and which are not specifically enumerated above or which are not delegated by the President in accordance with law." (italics ours)
>
> This provision speaks of such other powers vested in the President under the law. *What law then which gives him the power to reorganize? It is Presidential Decree No. 1772 which amended Presidential Decree No. 1416.* These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials.[10] (Emphasis supplied)

Larin and its progeny cannot validate EO 378 because its statutory basis, PD 1416, is an undue delegation of legislative power.

It is an unquestioned attribute of the broad and undefined legislative power of Congress to fashion Philippine bureaucracy by creating (and thus, abolishing) public offices save for offices created by the Constitution.[11] This power, including its ancillary

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[8] 413 Phil. 281 (2001) (upholding the validity of executive issuances deactivating the Economic Intelligence and Investigation Bureau, an agency under the Office of the President).

[9] G.R. No. 167324, 17 July 2007, 527 SCRA 746.

[10] *Supra* note 7 at 730.

[11] See *Canonizado v. Aguirre*, G.R. No. 133132, 25 January 2000, 323 SCRA 312; *Buklod ng Kawaning EIIB v. Zamora*, G.R. Nos. 142801-802, 10 July 2001, 360 SCRA 718.

to *reorganize*,[12] is exercised by the other branches only as allowed by Congress under valid statutory delegation. Even then, the delegated power only *partakes* of the original legislative power as the other branches can only *implement* the legislature's will.[13] Thus, despite their equally broad and undefined powers, neither the executive nor the judiciary *inherently* possesses the power to reorganize its bureaucracy.[14]

A simple scanning of the list of powers PD 1416 vests on the Executive shows that far from being a legislative delegation to implement congressional will, PD 1416 surrenders to the Executive the core legislative power to re-mold Philippine bureaucracy, with the ancillary privilege to control funding, thus:

1. The President of the Philippines shall have continuing authority to reorganize the administrative structure of the **National Government**.

2. For this purpose, the President may, at his discretion, take the following actions:

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[12] We described this power, as exercised by Congress, as follows: "Reorganization takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. It involves a reduction of personnel, consolidation of offices, or abolotion thereof by reason of economy or redundancy of functions." (*Canonizado v. Aguirre*, G.R. No. 133132, 25 January 2000, 323 SCRA 312, 326; internal citations omitted).

[13] The doctrine of non-delegation of legislative power admits of only two exceptions under the Constitution, namely, the delegation to the local governments (Section 3 and Section 20, Article X) and to the President on the imposition of tariff rates, trade quotas, and shipping dues (VI, § 28(2) and adoption of measures during national emergency (Section 23(2), Article VI).

[14] For the Executive, this authorization is found in Section 31, Chapter 10, Book II of the Administrative Code of 1987. For the judiciary, Section 43 of Batas Pambansa Blg. 129 (The Judiciary Reorganization Act of 1980) required the Supreme Court to submit to the President the staffing pattern for courts constituted under that law for issuance of relevant implementing rules. For the reorganization of the Office of the Court Administrator, Section 7 of Presidential Decree No. 828, as amended by Presidential Decree No. 842, delegated to the Supreme Court the power to "create such offices, services, divisions and other units in the Office of the Court Administrator, as may be necessary."

(a) Group, coordinate, consolidate or integrate departments, bureaus, offices, agencies, instrumentalities and functions **of the government**;

(b) Abolish departments, offices, agencies or functions which may not be necessary, or create those which are necessary, for the efficient conduct of **government functions services and activities**;

(c) **Transfer** functions, **appropriations**, equipment, properties, records and personnel from one department, bureau, office, agency or instrumentality to another;

(d) Create, classify, combine, split, and abolish positions; and

(e) **Standardize salaries**, materials and equipment. (Emphasis supplied)

Presidential Decree No. 1772 (PD 1772), amending PD 1416, *enlarged* the scope of these powers by extending the President's power to reorganize "to x x x all agencies, entities, instrumentalities, and units *of the National Government, including all government-owned or controlled corporations*, as well as the entire range of the powers, functions, authorities, administrative relationships, and related aspects pertaining to these agencies, entities, instrumentalities, and units."[15] Further, PD 1772 clarified that the President's power to "create, abolish, group, consolidate, x x x or integrate" offices relates to "entities, agencies, instrumentalities, and units of the *National Government*."[16]

The term "national government" has an established meaning in statutory and case law. Under the statute governing Philippine bureaucracy, the Administrative Code of 1987, "national government" refers to "the *entire machinery of the central government*, as distinguished from the different forms of local government."[17] Jurisprudence has interpreted this provision of

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[15] Last paragraph, Section 1, PD 1772.

[16] Section 2, PD 1772 (emphasis supplied).

[17] Section 2(2), Executive Order No. 292 (emphasis supplied). More specialized statutes, such as Section 4 of Republic Act No. 6758 (Compensation and Position Classification Act of 1989) substantially hews to the Administrative Code's definition: "The term "government" refers to *the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions* and shall include all, but shall not be limited to, departments, bureaus, offices,

the Administrative Code to encompass "the three great departments: the executive, the legislative, and the judicial."[18] By delegating to the Executive the "continuing authority to reorganize the administrative structure of the *National Government*" including the power to "create, abolish, group, consolidate, x x x or integrate" the "entities, agencies, instrumentalities, and units of the *National Government*," PD 1416, as amended, places under the Executive branch the vast — and undeniably legislative — power to constitute the entire Philippine Government in the guise of "reorganization."

Capping the unprecedented siphoning of legislative power to the Executive, PD 1416, as amended, authorizes the Executive to "transfer appropriations" and "standardize salaries" in the national government. The authorization to "transfer appropriations" is a complete repugnancy to the constitutional proscription that "*No law* shall be passed authorizing any transfer of appropriations. x x x."[19] On the other hand, the Constitution mandates that "*The Congress* shall provide for the standardization of compensation of government officials and employees, x x x."[20]

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boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. x x x" (emphasis supplied).

[18] *Mactan Cebu International Airport Authority v. Marcos*, G.R. No. 120082, 11 September 1996, 261 SCRA 667, 688-689, citing the following definition of "government" in *Bacani v. NACOCO*, 100 Phil. 468, 471-472 (1956):

> [W]e state that the term "Government" may be defined as "that institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them" *This institution, when referring to the national government, has reference to what our Constitution has established composed of three great departments, the legislative, executive, and the judicial, through which the powers and functions of government are exercised.* (Internal citation omitted; emphasis supplied)

[19] Article VI, Section 25(5), Constitution.

[20] Section 5, Article IX-B, Constitution. The entire provision reads: "The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled

Indeed, Congress, with the Executive's acquiescence, has repeatedly exercised this *exclusive* power to standardize public sector employees' compensation by enacting a law to that effect[21] and exempting classes of employees from its coverage.[22]

Thus, much like the invalidated Section 68 of the previous Revised Administrative Code delegating to the President the legislative power to create municipalities,[23] PD 1416, as amended, delegates to the President that undefined legislative power to constitute the Philippine bureaucracy which the sovereign people of this polity delegated to Congress only. This subsequent delegation of the power to legislate offends the fundamental precept in our scheme of government that delegated power cannot again be delegated.[24]

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corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, their positions."

[21] Republic Act No. 6758 (Compensation and Position Classification Act of 1989).

[22] *E.g.*, Republic Act No. 7907 (1995) for Land Bank of the Philippines; Republic Act No. 8282 (1997) for Social Security System; Republic Act No. 8289 (1997) for Small Business Guarantee and Finance Corporation; Republic Act No. 8291 (1997) for Government Service Insurance System; Republic Act No. 8523 (1998) for Development Bank of the Philippines; Republic Act No. 8763 (2000) for Home Guaranty Corporation; and Republic Act No. 9302 (2004) for Philippine Deposit Insurance Corporation (PDIC).

[23] Struck down as unconstitutional in *Pelaez v. Auditor General*, No. L-23825, 24 December 1965, 15 SCRA 569.

[24] A paradigmatic statement of the doctrine runs:

> The power to make laws — the legislative power — is vested in a bicameral Legislature by the Jones Law (sec. 12) and in a unicameral National Assembly by the Constitution (Act. VI, sec. 1, Constitution of the Philippines). **The Philippine Legislature or the National Assembly may not escape its duties and responsibilities by delegating that power to any other body or authority. Any attempt to abdicate the power is unconstitutional and void, on the principle that *potestas delegata non delegare potest*.** This principle is said to have originated with the glossators, was introduced into English law through a misreading of Bracton, there developed as a principle of agency, was established by Lord Coke in the English public law in decisions forbidding the delegation of judicial power, and found its way

The radical merger of legislative and executive powers PD 1416 sanctions makes sense in a parliamentary system of merged executive and legislative branches. Indeed, PD 1416, issued in 1979, three years after Amendment No. 6 vested legislative power to then President Marcos, was *precisely* meant to operate within such system, as declared in PD 1416's last "Whereas" clause: "WHEREAS, the transition towards the *parliamentary form of government* will necessitate flexibility in the organization of the national government[.]" When the Filipino people ratified the 1987 Constitution on 2 February 1987, restoring the operation of the original tri-branch system of government, PD 1416's paradigm of merged executive and legislative powers ceased to have relevance. Although then President Aquino, by her revolutionary ascension to the Presidency, held and exercised these two powers under the Provisional Constitution,[25] her legislative powers ceased when the post-EDSA Congress convened on 27 July 1987 following the 1987 Constitution's mandate that "The incumbent President shall continue to exercise legislative powers until the first Congress is convened."[26] Thus, even though the demands of modernity[27] and the imperatives of checks and balances[28] may have blurred the demarcation lines among the three branches, we remain a government of separated powers, rooted in the conviction that division — not unity — of powers

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into America as an enlightened principle of free government. It has since become an accepted corollary of the principle of separation of powers. x x x (*People v. Vera*, 65 Phil. 56, 112 (1937); emphasis supplied).

[25] Section 1, Article II.

[26] Section 6, Article XVIII. See also *Association of Small Landowners in the Philippines Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343.

[27] The rise of the administrative state since the latter half of the last century saw the blending of quasi-legislative and quasi-judicial powers in multifarious executive offices, radically redefining the classical notion of separation of powers. (see IRENE R. CORTES, *PHILIPPINE ADMINISTRATIVE LAW*: CASES AND MATERIALS 6-11 [2nd ed., 1984])

[28] Among the constitutionally permissible inter-branch encroachments are the President's veto power, Congress' power of legislative inquiry and the judiciary's power of judicial review.

prevents tyranny.[29] PD 1416, as amended, with its blending of legislative and executive powers, is a vestige of an autocratic era, totally anachronistic to our present-day constitutional democracy.

Making sweeping statements that the President's power to reorganize "pertains only to the Office of the President and departments, offices, and agencies of the executive branch and does not include the Judiciary, the Legislature or constitutionally created or mandated bodies" and that "the exercise by the President of the power to reorganize x x x must be in accordance with the Constitution, relevant laws and jurisprudence"[30] will not erase PD 1416 and PD 1772 from our statute books. If this Court found it intolerable under our system of government for the President to demand "obedience to all x x x *decrees* x x x promulgated by me personally or upon my direction,"[31] the same hostility should be directed against PD 1416's authorization for the President to "reorganize x x x the National Government," "transfer x x x appropriations" and "standardize salaries." *These issuances all vest on the President unadulterated legislative power*.

Hence, PD 1416, being repugnant to the 1987 Constitution in several aspects, can no longer be given effect. At the very least, the exercise of legislative powers by the President under PD 1416 ceased upon the convening of the First Congress, as expressly provided in Section 6, Article XVIII of the 1987 Constitution.

Similarly, *Anak Mindanao Party-List Group v. The Executive Secretary*[32] (finding valid executive issuances transferring to a

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[29] This is a core theory justifying the separation of powers, undergirded by modern political thinking, which found its way into the writings of the framers of the United States' Constitution, the blueprint of the present Philippine constitution.

[30] Decision, p. 20.

[31] Presidential Proclamation No. 1017 which was partially declared unconstitutional in *David v. Arroyo*, G.R. No. 171396, 3 May 2006, 489 SCRA 160.

[32] G.R. No. 166052, 29 August 2007, 531 SCRA 583.

department[33] two offices under the Office of the President) is not in point because that case involved a reorganization falling within the ambit of Section 31(3) transferring offices from the Office of the President to another department.

Nor is *Canonizado v. Aguirre*[34] authority for the proposition that the power of the President to reorganize under Section 31 involves the "alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them" or the "reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions."[35] *Canonizado* reviewed a *legislative* reorganization (Republic Act No. 8851 reorganizing the Philippine National Police) thus Section 31 never figured in its analysis. Accordingly, the vast reach of *Canonizado*'s definition of the power to reorganize[36] relates to Congress, which is, after all, the original repository of such power, as incident to its broad and all-encompassing power to legislate.

Doctrine of Presidential Control Over the Executive Department No Basis to Validate EO 378

The doctrine of presidential control over the executive department likewise furnishes no basis to uphold the validity of EO 378. As distinguished from supervision, the doctrine of control finds application in altering *acts* of the President's subordinates. It does not sanction structural or functional changes even within the executive department.[37]

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[33] Department of Agrarian Reform.

[34] G.R. No. 133132, 25 January 2000, 323 SCRA 312.

[35] *Id.* at 326.

[36] Citing De Leon and De Leon, Jr., *The Law On Public Officers And Election Law* (1994 ed.), 365 and *Dario v. Mison*, G.R. No. 81954, 8 August 1989, 176 SCRA 84 (reviewing the constitutionality of Executive Order No. 127, reorganizing the then Ministry of Finance, issued by President Corazon C. Aquino in the exercise of her legislative powers under the Provisional Constitution).

[37] This is apparent from the following canonical distinction of the two doctrines: "In administrative law supervision means overseeing or the power

EO 378 Valid for Implementing RA 9184

RA 9184 mandates the conduct of competitive bidding in all the procurement activities of the government including the acquisition of "items, supplies, materials, and general support services x x x which may be needed in the transaction of the public businesses or in the pursuit of any government x x x activity"[38] save for limited transactions.[39] By opening government's procurement of standard and accountable forms to competitive bidding (except for documents crucial to the conduct of clean elections which has to be printed solely by government), EO 378 merely implements RA 9184's principle of promoting "competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding."[40] Indeed, EO 378 is not so much a "reorganization" move involving realignment of offices and personnel movement as an issuance to "ensure that the government benefits from the best services available from the market at the best price."[41] EO 378's capping of NPO's budget to its income is a logical by-product of opening NPO's operations to the private sector — with the entry of market forces, there will expectedly be a decrease in its workload, lowering its funding needs.

Accordingly, I vote to **DISMISS** the petition.

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or authority of an officer to see that subordinate officers perform their **duties**. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a **subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter**." (*Mondano v. Silvosa*, 97 Phil. 143, 147-148 [1955]) (Emphasis supplied).

[38] Section 4 in relation to Section 5(h).

[39] Section 10, Article IV in relation to Article XVI.

[40] Section 3(c).

[41] EO 378, second "Whereas" clause.

SECOND DIVISION

[G.R. No. 169974. April 20, 2010]

SUPERIOR COMMERCIAL ENTERPRISES, INC., *petitioner, vs.* **KUNNAN ENTERPRISES LTD. and SPORTS CONCEPT & DISTRIBUTOR, INC.,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; R.A. 166 (TRADEMARK LAW); TRADEMARK INFRINGEMENT; WHAT CONSTITUTES.— Section 22 of Republic Act No. 166, as amended ("RA 166"), the law applicable to this case, defines trademark infringement as follows: Section 22. *Infringement, what constitutes*. — ***Any*** **person who [1]** ***shall*** **use, without the consent of the registrant**, *any* reproduction, counterfeit, copy or colorable imitation **of *any* registered mark** or trade-name *in connection with* the sale, offering for sale, or advertising of *any* goods, business or services on or *in connection with* which such use is likely to cause confusion or mistake or to deceive purchasers or others *as to* the source or origin of such goods or services, or identity of such business; or [2] reproduce, counterfeit, copy, or colorably imitate *any* such mark or trade-name and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used *upon* or *in connection with* such goods, business or services, *shall* be *liable to* a civil action by the registrant for *any* or *all of* the remedies *herein* provided.

2. ID.; ID.; ID.; ID.; ONLY A REGISTRANT OF A MARK CAN FILE A CASE FOR INFRINGEMENT AND THE CANCELLATION OF REGISTRATION OF A TRADEMARK HAS THE EFFECT OF DEPRIVING THE REGISTRANT OF PROTECTION FROM INFRINGEMENT FROM THE MOMENT THE JUDGMENT OR ORDER OF CANCELLATION HAS BECOME FINAL.— Section 22 of RA 166 states that only a registrant of a mark can file a case for infringement. Corollary to this, Section 19 of RA 166 provides that any right conferred upon the registrant under the

provisions of RA 166 terminates when the judgment or order of cancellation has become final, *viz*: Section 19. *Cancellation of registration*. — If the Director finds that a case for cancellation has been made out he shall order the cancellation of the registration. The order shall not become effective until the period for appeal has elapsed, or if appeal is taken, until the judgment on appeal becomes final. **When the order or judgment becomes final, any right conferred by such registration upon the registrant or any person in interest of record shall terminate**. Notice of cancellation shall be published in the Official Gazette. Thus, we have previously held that the cancellation of registration of a trademark has the effect of depriving the registrant of protection from infringement from the moment judgment or order of cancellation has become final.

3. ID.; ID.; ID.; ID.; TITLE TO THE TRADEMARK IS INDISPENSABLE IN A TRADEMARK INFRINGEMENT CASE; SINCE PETITIONER'S CERTIFICATES OF REGISTRATION OVER THE DISPUTED TRADEMARKS WAS EFFECTIVELY CANCELLED WITH FINALITY, ITS CASE FOR TRADEMARK INFRINGEMENT LOST ITS LEGAL BASIS AND NO LONGER PRESENTED A VALID CAUSE OF ACTION.— In the present case, by operation of law, specifically Section 19 of RA 166, the trademark infringement aspect of SUPERIOR's case has been rendered moot and academic in view of the finality of the decision in the Registration Cancellation Case. In short, SUPERIOR is left without any cause of action for trademark infringement since the cancellation of registration of a trademark deprived it of protection from infringement from the moment judgment or order of cancellation became final. To be sure, in a trademark infringement, title to the trademark is indispensable to a valid cause of action and such title is shown by its certificate of registration. With its certificates of registration over the disputed trademarks effectively cancelled with finality, SUPERIOR's case for trademark infringement lost its legal basis and no longer presented a valid cause of action.

4. ID.; ID.; ID.; ID.; A MERE DISTRIBUTOR CANNOT ASSERT ANY PROTECTION FROM TRADEMARK INFRINGEMENT AS IT HAD NO RIGHT IN THE FIRST PLACE TO THE REGISTRATION OF THE DISPUTED

TRADEMARKS.— Even assuming that SUPERIOR's case for trademark infringement had not been rendered moot and academic, there can be no infringement committed by KUNNAN who was adjudged with finality to be the rightful owner of the disputed trademarks in the Registration Cancellation Case. Even prior to the cancellation of the registration of the disputed trademarks, SUPERIOR – as a mere distributor and not the owner — cannot assert any protection from trademark infringement as it had no right in the first place to the registration of the disputed trademarks. In fact, jurisprudence holds that in the absence of any inequitable conduct on the part of the manufacturer, an exclusive distributor who employs the trademark of the manufacturer does not acquire proprietary rights of the manufacturer, and **a registration of the trademark by the distributor as such belongs to the manufacturer**, provided the fiduciary relationship does not terminate before application for registration is filed.

5. ID.; UNFAIR COMPETITION; DEFINED; ESSENTIAL ELEMENTS.— Unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. The essential elements of unfair competition are (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor.

6. ID.; ID.; "TRUE TEST" OF UNFAIR COMPETITION.— Jurisprudence also formulated the following "true test" of unfair competition: whether the acts of the defendant have the intent of deceiving or are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions of the particular trade to which the controversy relates. One of the essential requisites in an action to restrain unfair competition is proof of fraud; the intent to deceive, actual or probable must be shown before the right to recover can exist.

7. ID.; ID.; THERE CAN BE TRADEMARK INFRINGEMENT WITHOUT UNFAIR COMPETITION.— No evidence exists showing that KUNNAN ever attempted to pass off the goods it sold (*i.e.* sportswear, sporting goods and equipment) as those of SUPERIOR. In addition, there is no evidence of bad faith

or fraud imputable to KUNNAN in using the disputed trademarks. Specifically, SUPERIOR failed to adduce any evidence to show that KUNNAN by the above-cited acts intended to deceive the public as to the identity of the goods sold or of the manufacturer of the goods sold. In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, we held that there can be trademark infringement **without unfair competition** such as when the infringer **discloses on the labels containing the mark that he manufactures the goods, thus preventing the public from being deceived that the goods originate from the trademark owner.** In this case, no issue of confusion arises because the same manufactured products are sold; only the ownership of the trademarks is at issue. Furthermore, KUNNAN's January 29, 1993 notice by its terms prevents the public from being deceived that the goods originated from SUPERIOR since the notice clearly indicated that KUNNAN is the manufacturer of the goods bearing the trademarks "KENNEX" and "PRO KENNEX." With the established ruling that KUNNAN is the rightful owner of the trademarks of the goods that SUPERIOR asserts are being unfairly sold by KUNNAN under trademarks registered in SUPERIOR's name, the latter is left with no effective right to make a claim. In other words, with the CA's final ruling in the Registration Cancellation Case, SUPERIOR's case no longer presents a valid cause of action. For this reason, the unfair competition aspect of the SUPERIOR's case likewise falls.

8. REMEDIAL LAW; CIVIL PROCEDURE; *RES JUDICATA;* CONCLUSIVENESS OF JUDGMENT; APPLICABLE IN CASE AT BAR.— We also note that the doctrine of *res judicata* bars SUPERIOR's present case for trademark infringement. The doctrine of *res judicata* embraces two (2) concepts: the first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47, and the second is "conclusiveness of judgment" under paragraph (c) thereof. In the present case, the second concept – conclusiveness of judgment – applies. Under the concept of *res judicata* by **conclusiveness of judgment**, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies ***in all later suits on points and matters determined in the former suit.*** Stated differently, facts and issues actually and directly resolved in a former suit cannot again be raised

in any future case between the same parties, even if the latter suit may involve a different cause of action. This second branch of the principle of *res judicata* bars the re-litigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action. Because the Registration Cancellation Case and the present case involve the same parties, litigating with respect to and disputing the same trademarks, we are bound to examine how one case would affect the other. In the present case, even if the causes of action of the Registration Cancellation Case (the cancellation of trademark registration) differs from that of the present case (the improper or unauthorized use of trademarks), the final judgment in the Registration Cancellation Case is nevertheless conclusive on the particular facts and issues that are determinative of the present case.

9. ID.; ID.; ID.; ID.; ISSUE OF OWNERSHIP OF MARK ALREADY DECIDED WITH FINALITY.— To establish trademark infringement, the following elements must be proven: (1) the validity of plaintiff's mark; (2) **the plaintiff's ownership of the mark**; and (3) the use of the mark or its colorable imitation by the alleged infringer results in "likelihood of confusion." Based on these elements, we find it immediately obvious that the second element – the plaintiff's ownership of the mark – was what the Registration Cancellation Case decided with finality. On this element depended the validity of the registrations that, on their own, only gave rise to the presumption of, but was not conclusive on, the issue of ownership. In no uncertain terms, **the appellate court in the Registration Cancellation Case ruled that SUPERIOR was a mere distributor and could not have been the owner, and was thus an invalid registrant of the disputed trademarks.** Significantly, these are the exact terms of the ruling the CA arrived at in the present petition now under our review. Thus, whether with one or the other, the ruling on the issue of ownership of the trademarks is the same. Given, however, the final and executory ruling in the Registration Cancellation Case on the issue of ownership that binds us and the parties, any further discussion and review of the issue of ownership – although the current CA ruling is legally correct and can stand on its own merits – becomes a pointless academic discussion.

APPEARANCES OF COUNSEL

Sioson Sioson & Associates for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondents.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the (1) decision[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 60777 that reversed the ruling of the Regional Trial Court of Quezon City, Branch 85 (*RTC*),[3] and dismissed the petitioner Superior Commercial Enterprises, Inc.'s (*SUPERIOR*) complaint for trademark infringement and unfair competition (with prayer for preliminary injunction) against the respondents Kunnan Enterprises Ltd. (*KUNNAN*) and Sports Concept and Distributor, Inc. (*SPORTS CONCEPT*); and (2) the CA resolution[4] that denied SUPERIOR's subsequent motion for reconsideration. The RTC decision that the CA reversed found the respondents liable for trademark infringement and unfair competition, and ordered them to pay SUPERIOR ₱2,000,000.00 in damages, ₱500,000.00 as attorney's fees, and costs of the suit.

THE FACTUAL ANTECEDENTS

On February 23, 1993, SUPERIOR[5] filed a complaint for trademark infringement and unfair competition with preliminary

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[1] Under Rule 45 of the RULES OF COURT.

[2] Dated June 22, 2005; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justice Renato C. Dacudao and Associate Justice Edgardo F. Sundiam (both retired); *rollo*, pp. 33-50.

[3] CA *rollo*, pp. 11-22.

[4] Dated October 4, 2005; *rollo*, pp. 51-52.

[5] SUPERIOR is a domestic corporation duly organized under Philippine laws; *id* at 34.

injunction against KUNNAN[6] and SPORTS CONCEPT[7] with the RTC, docketed as Civil Case No. Q-93014888.

In support of its complaint, SUPERIOR *first* claimed to be the owner of the trademarks, trading styles, company names and business names[8] "KENNEX,"[9] "KENNEX & DEVICE,"[10] "PRO KENNEX"[11] and "PRO-KENNEX" (*disputed trademarks*).[12] *Second*, it also asserted its prior use of these

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[6] KUNNAN is foreign corporation organized under the laws of Taiwan, Republic of China, doing business in the Philippines; *id.*

[7] SPORTS CONCEPT is a domestic corporation organized under Philippine laws; *id.*

[8] SUPERIOR claimed that it registered the business name "PRO-KENNEX SPORTS PRODUCTS" with the Bureau of Domestic Trade on February 10, 1983 under Certificate of Registration No. 03767. It also claimed that it registered the business name "PRO-KENNEX (PHIL) SPORTS PRODUCTS" with the Bureau of Domestic Trade on February 10, 1983 under Certificate of Registration No. 03767, which it renewed on April 4, 1988 with Certificate of Registration No. 14693 dated April 4, 1988; *id.* at 35.

[9] SUPERIOR alleged that it first used the mark "KENNEX" in the Philippines on March 15, 1978 and registered the mark in its name under Supplemental Registration No. 34478 dated May 31, 1985 to be used for the following goods, namely: "tennis racket, pelota racket, pingpong racket, goal net, volleyball net and tennis shoulder bags;" *id.* at 12.

[10] SUPERIOR also claimed that it first used the mark "KENNEX & DEVICE OF LETTER 'K" INSIDE A CIRCLE OF THORNS" in the Philippines on March 15, 1978; the mark was registered in its name under Supplemental Registration No. 4730 dated May 23, 1980 to be used for the following goods: "tennis racket, pelota racket, pingpong, squash racket, badminton racket, basketball, tennis ball, soccer ball, football, badminton shuttlecock, sports clothing, head ban, wrist band, basketball goal net, tennis net, volleyball net, tennis shoulder bag, handbag and sport rubber shoes, tennis string;" *id.*

[11] SUPERIOR also alleged that the trademark "PROKENNEX" was first used in the Philippines by KUNNAN on August 1, 1982 and was registered under the former's name as assignee under Principal Certificate of Registration No. 39254 dated July 13, 1988 for the following goods: "handbags, travelling bags and trunks;" *id.* at 13.

[12] SUPERIOR also claimed that the trademark "PRO-KENNEX" was first used by KUNNAN on January 2, 1980 and is registered under the former's name as assignee under Principal Certificate of Registration No. 40326 dated

trademarks, presenting as evidence of ownership the Principal and Supplemental Registrations of these trademarks in its name. *Third*, SUPERIOR also alleged that it extensively sold and advertised sporting goods and products covered by its trademark registrations. *Finally*, SUPERIOR presented as evidence of its ownership of the disputed trademarks the preambular clause of the Distributorship Agreement dated October 1, 1982 (*Distributorship Agreement*) it executed with KUNNAN, which states:

> Whereas, **KUNNAN intends to acquire the ownership of KENNEX trademark registered by the [*sic*] Superior in the Philippines**. Whereas, the [*sic*] Superior is desirous of having been appointed [*sic*] as the sole distributor by KUNNAN in the territory of the Philippines." [Emphasis supplied.][13]

In its defense, KUNNAN disputed SUPERIOR's claim of ownership and maintained that **SUPERIOR** – as mere distributor from October 6, 1982 until December 31, 1991 – **fraudulently registered the trademarks in its name**. KUNNAN alleged that it was incorporated in 1972, under the name KENNEX Sports Corporation for the purpose of manufacturing and selling sportswear and sports equipment; it commercially marketed its products in different countries, including the Philippines since 1972.[14] It created and first used "PRO KENNEX," derived

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August 12, 1988 for the following goods: "tennis rackets, squash rackets, racketball rackets, badminton rackets and fishing rods." However, SUPERIOR claims that it first used the trademark "PRO-KENNEX" with the word "ball design" and "tennis racket" on January 2, 1980 and is registered in its name under Certificate of Registration No. 41032 dated September 2, 1988 for the following sporting goods: "tennis racket and accessories." The trademark "PRO-KENNEX" with the design ball and racket is claimed to be first used by SUPERIOR on January 2, 1980 and is registered under Supplemental Certificate of Registration No. 6663 dated November 2, 1984 for the following goods: "sporting goods such as tennis racket and accessories;" *id.*

[13] *Id.* at 102.

[14] KUNNAN alleged that it has manufactured products bearing the KENNEX and PRO KENNEX trademarks and sold them in the Philippines, initially through the importation by independent outlets and the subsequently through agreements with local distributors; *id.* at 90-91.

from its original corporate name, as a distinctive trademark for its products in 1976. KUNNAN also alleged that it registered the "PRO KENNEX" trademark not only in the Philippines but also in 31 other countries, and widely promoted the "KENNEX" and "PRO KENNEX" trademarks through worldwide advertisements in print media and sponsorships of known tennis players.

On October 1, 1982, after the expiration of its initial distributorship agreement with another company,[15] KUNNAN appointed SUPERIOR as its exclusive distributor in the Philippines under a Distributorship Agreement whose pertinent provisions state:[16]

> Whereas, KUNNAN intends to acquire ownership of KENNEX trademark registered by the Superior in the Philippines. **Whereas, the Superior is desirous of having been appointed [*sic*] as the sole distributor by KUNNAN in the territory of the Philippines**.
>
> Now, therefore, the parties hereto agree as follows:
>
> 1. **KUNNAN in accordance with this Agreement, will appoint the sole distributorship right to Superior in the Philippines**, and this Agreement could be renewed with the consent of both parties upon the time of expiration.
> 2. **The Superior, in accordance with this Agreement, shall assign the ownership of KENNEX trademark, under the registration of Patent Certificate No. 4730 dated 23 May 1980 to KUNNAN on the effects [*sic*] of its ten (10) years contract of distributorship,** and it is required that the ownership of the said trademark shall be genuine, complete as a whole and without any defects.
> 3. KUNNAN will guarantee to the Superior that no other third parties will be permitted to supply the KENNEX PRODUCTS in the Philippines except only to the Superior. If KUNNAN

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[15] KUNNAN also alleged that its initial distributorship agreement was with Bonmark Sportsmasters, Inc. from August 21, 1982 to January 3, 1983; *id.* at 91.

[16] *Id.* at 102-103.

violates this stipulation, the transfer of the KENNEX trademark shall be null and void.

4. If there is a necessity, the Superior will be appointed, for the protection of interest of both parties, as the agent in the Philippines with full power to exercise and granted the power of attorney, to pursue any case of Pirating, Infringement and Counterfeiting the [*sic*] KENNEX trade mark in the Philippine territory.

5. The Superior will be granted from [*sic*] KUNNAN's approval before making and selling any KENNEX products made in the Philippines and the other countries, and if this is the situation, KUNNAN is entitled to have a royalty of 5%-8% of FOB as the right.

6. Without KUNNAN's permission, the Superior cannot procure other goods supply under KENNEX brand of which are not available to supply [*sic*] by KUNNAN. However, in connection with the sporting goods, it is permitted that the Superior can procure them under KENNEX brand of which are not available to be supplied by KUNNAN. [Emphasis supplied.]

Even though this Agreement clearly stated that SUPERIOR was obligated to assign the ownership of the KENNEX trademark to KUNNAN, the latter claimed that the Certificate of Registration for the KENNEX trademark remained with SUPERIOR because Mariano Tan Bon Diong (*Mr. Tan Bon Diong*), SUPERIOR's President and General Manager, misled KUNNAN's officers into believing that KUNNAN was not qualified to hold the same due to the "many requirements set by the Philippine Patent Office" that KUNNAN could not meet.[17] KUNNAN further asserted that SUPERIOR deceived it into assigning its applications for registration of the "PRO KENNEX" trademark in favor of SUPERIOR, through an Assignment Agreement dated June 14, 1983 whose pertinent provisions state:[18]

1. In consideration of the distributorship relationship between KUNNAN and Superior, KUNNAN, who is the seller in the

[17] *Id.* at 92.

[18] *Id.* at 94.

distributorship relationship, **agrees to assign the following trademark applications owned by itself in the Philippines to Superior who is the buyer in the distributorship relationship.**

Trademark	Application Number	Class
PROKENNEX	49999	28
PROKENNEX	49998	25
PROKENNEX	49997	18

2. **Superior shall acknowledge that KUNNAN is still the real and truthful owner of the abovementioned trademarks, and shall agree that it will not use the right of the abovementioned trademarks to do anything which is unfavourable or harmful to KUNNAN**.

3. **Superior agrees that it will return back the abovementioned trademarks to KUNNAN without hesitation at the request of KUNNAN at any time.** KUNNAN agrees that the cost for the concerned assignment of the abovementioned trademarks shall be compensated by KUNNAN.

4. Superior agrees that the abovementioned trademarks when requested by KUNNAN shall be clean and without any incumbency.

5. Superior agrees that after the assignment of the abovementioned trademarks, it shall have no right to reassign or license the said trademarks to any other parties except KUNNAN. [Emphasis supplied]

Prior to and during the pendency of the infringement and unfair competition case before the RTC, KUNNAN filed with the now defunct Bureau of Patents, Trademarks and Technology Transfer[19] **separate Petitions for the Cancellation of Registration Trademark Nos. 41032, SR 6663, 40326, 39254, 4730 and 49998**, docketed as Inter Partes Cases Nos. 3709, 3710, 3811, 3812, 3813 and 3814, **as well as Opposition to Application Serial Nos. 84565 and 84566**, docketed as

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[19] On January 1, 1998, Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, took effect which abolished among other offices, the Bureau of Patents, Trademarks and Technology Transfer and transferred its functions to the newly created Intellectual Property Office.

Inter Partes Cases Nos. 4101 and 4102 (*Consolidated Petitions for Cancellation*) involving the KENNEX and PRO KENNEX trademarks.[20] In essence, KUNNAN filed the Petition for Cancellation and Opposition on the ground that SUPERIOR fraudulently registered and appropriated the disputed trademarks; as mere distributor and not as lawful owner, it obtained the registrations and assignments of the disputed trademarks in violation of the terms of the Distributorship Agreement and Sections 2-A and 17 of Republic Act No. 166, as amended.[21]

On December 3, 1991, upon the termination of its distributorship agreement with SUPERIOR, KUNNAN appointed SPORTS CONCEPT as its new distributor. Subsequently, KUNNAN also caused the publication of a Notice and Warning in the Manila Bulletin's January 29, 1993 issue, stating that (1) it is the owner of the disputed trademarks; (2) it terminated its Distributorship Agreement with SUPERIOR; and (3) it appointed SPORTS CONCEPT as its exclusive distributor. This notice prompted SUPERIOR to file its Complaint for Infringement of Trademark and Unfair Competition with Preliminary Injunction against KUNNAN.[22]

The RTC Ruling

On March 31, 1998, the RTC issued its decision[23] holding KUNNAN liable for trademark infringement and unfair

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[20] *Id.* at 36.

[21] *Id.* at 82.

[22] *Id.* at 36-37.

[23] The dispositive portion of the decision reads:

> WHEREFORE, it is hereby ordered that it appearing from the established facts that great and irreparable damage and injury has resulted and will continue to result to the Plaintiff, let a writ of preliminary injunction be issued enjoining the defendants KUNNAN ENTERPRISES LIMITED, and SPORTS CONCEPT AND DISTRIBUTOR INC., their officers, employees, agents, representatives, or assigns and other persons acting for and in their behalf, from using, in connection with its business the trademarks KENNEX, PRO-KENNEX AND KENNEX and DEVICE OF LETTER "K" INSIDE A CIRCLE OF THORNS and the like and

competition. The RTC also issued a writ of preliminary injunction enjoining KUNNAN and SPORTS CONCEPT from using the disputed trademarks.

The RTC found that SUPERIOR sufficiently proved that it was the first user and owner of the disputed trademarks in the Philippines, based on the findings of the Director of Patents in Inter Partes Case No. 1709 and 1734 that SUPERIOR was "rightfully entitled to register the mark 'KENNEX' as user and owner thereof." It also considered the "Whereas clause" of the Distributorship Agreement, which categorically stated that "KUNNAN intends to acquire ownership of [the] KENNEX trademark registered by SUPERIOR in the Philippines." According to the RTC, this clause amounts to KUNNAN's express recognition of SUPERIOR's ownership of the KENNEX trademarks.[24]

KUNNAN and SPORTS CONCEPT appealed the RTC's decision to the CA where the appeal was docketed as CA-G.R. CV No. 60777. KUNNAN maintained that SUPERIOR was merely its distributor and could not be the owner of the disputed trademarks. SUPERIOR, for its part, claimed ownership based on its prior use and numerous valid registrations.

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any other marks and trade names which are identical or confusingly similar to plaintiff's marks and trade names.

a.) All infringing matter in the possession of defendants, its officers, employees, agents, representatives, or assigns should be delivered to this Court or the plaintiff and be accordingly destroyed;

b.) Defendants are hereby ordered to render an accounting of the sales from the time it commenced using the marks and trade names of the plaintiff up to the time of judgment, including the profits derived from said sales;

c.) Defendants are hereby ordered to pay plaintiff the amount of ₱2,000,000.00 which is the reasonable profit which plaintiff could have made, had not defendant infringed the plaintiff's trademarks;

d.) Defendants are likewise ordered to pay plaintiff's attorney's fees and expenses of litigation in the amount of ₱500,000.00;

e.) Defendants should pay the cost of the suit.

SO ORDERED. *Id.* at 37.

[24] CA *rollo,* pp. 11-22.

Intervening Developments:
The IPO and CA Rulings

In the course of its appeal to the CA, KUNNAN filed on December 19, 2003 a Manifestation and Motion praying **that the decision of the Bureau of Legal Affairs (*BLA*) of the Intellectual Property Office (*IPO*), dated October 30, 2003, in the Consolidated Petitions for Cancellation be made of record and be considered by the CA in resolving the case**.[25] The BLA ruled in this decision —

> In the case at bar, Petitioner-Opposer (Kunnan) has overwhelmingly and convincingly established its rights to the mark "PRO KENNEX." It was proven that actual use by Respondent-Registrant is not in the concept of an owner but as a mere distributor (Exhibits "I", "S" to "S-1", "P" and "P-1" and "Q" and "Q-2") and as enunciated in the case of *Crisanta Y. Gabriel vs. Dr. Jose R. Perez*, 50 SCRA 406, "a mere distributor of a product bearing a trademark, even if permitted to use said trademark has no right to and cannot register the said trademark."
>
> WHEREFORE, there being sufficient evidence to prove that the Petitioner-Opposer (KUNNAN) is the prior user and owner of the trademark **"PRO-KENNEX"**, the consolidated Petitions for Cancellation and the Notices of Opposition are hereby **GRANTED**. Consequently, the trademark **"PRO-KENNEX"** bearing Registration Nos. 41032, 40326, 39254, 4730, 49998 for the mark PRO-KENNEX issued in favor of Superior Commercial Enterprises, Inc., herein Respondent-Registrant under the Principal Register and SR No. 6663 are hereby **CANCELLED**. Accordingly, trademark application Nos. 84565 and 84566, likewise for the registration of the mark PRO-KENNEX are hereby **REJECTED**.
>
> Let the file wrappers of PRO-KENNEX subject matter of these cases be forwarded to the Administrative Finance and Human Resources Development Services Bureau (AFHRDSB) for appropriate action in accordance with this Decision and a copy thereof be furnished the Bureau of Trademarks (BOT) for information and update of its record.[26]

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[25] *Rollo*, p. 39.

[26] *Id.* at 93. While the dispositive portion of the BLA Decision dated October 30, 2003 referred only to the PRO-KENNEX trademark, Certificate

On February 4, 2005, KUNNAN again filed another Manifestation requesting that the **IPO Director General's decision on appeal dated December 8, 2004, denying SUPERIOR's appeal**, be given weight in the disposition of the case.[27] The dispositive portion of the decision reads:[28]

> WHEREFORE, premises considered, there is no cogent reason to disturb Decision No. 2003-35 dated 30 October 2003 rendered by the Director of the Bureau of Legal Affairs. Accordingly, the instant appeal is DENIED and the appealed decision is hereby AFFIRMED.

We take judicial notice that SUPERIOR questioned the IPO Director General's ruling before the Court of Appeals on a petition for review under Rule 43 of the Rules of Court, docketed as CA-G.R. SP No. 87928 (*Registration Cancellation Case*). On August 30, 2007, the CA rendered its decision dismissing SUPERIOR's petition.[29] On December 3, 2007, **the CA decision was declared final and executory** and entry of judgment was accordingly made. Hence, **SUPERIOR's registration of the disputed trademarks now stands effectively cancelled**.

The CA Ruling

On June 22, 2005, the CA issued its decision in CA-G.R. CV No. 60777, reversing and setting aside the RTC's decision of March 31, 1998.[30] It dismissed SUPERIOR's Complaint

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of Registration No. 4730 which covers the KENNEX trademarks was cancelled in the same Decision. This oversight was remedied in the Director General's Decision dated December 8, 2004 which noted that the "registrations and the applications cover the mark PRO-KENNEX except Registration No. 4730 which refers to the mark KENNEX;" *id.* at 53-54.

[27] *Supra* note 23.

[28] *Id.* at 67.

[29] Decision penned by Guevara-Salonga, *J.*, with Roxas and Garcia, *JJ.*, concurring.

[30] The dispositive portion of which states:

> WHEREFORE, the Appeal is GRANTED. The Decision dated 31 March 1998 of the Regional Trial Court of Quezon City, Branch 85 is

for Infringement of Trademark and Unfair Competition with Preliminary Injunction on the ground that *SUPERIOR failed to establish by preponderance of evidence its claim of ownership over the KENNEX and PRO KENNEX trademarks*. The CA found the Certificates of Principal and Supplemental Registrations and the "whereas clause" of the Distributorship Agreement insufficient to support SUPERIOR's claim of ownership over the disputed trademarks.

The CA stressed that SUPERIOR's possession of the aforementioned Certificates of Principal Registration does not conclusively establish its ownership of the disputed trademarks as dominion over trademarks is not acquired by the fact of registration alone;[31] at best, registration merely raises a presumption of ownership that can be rebutted by contrary evidence.[32] The CA further emphasized that the Certificates of Supplemental Registration issued in SUPERIOR's name do not even enjoy the presumption of ownership accorded to registration in the principal register; it does not amount to a *prima facie* evidence of the validity of registration or of the registrant's exclusive right to use the trademarks in connection with the goods, business, or services specified in the certificate.[33]

In contrast with the failure of SUPERIOR's evidence, the CA found that KUNNAN presented sufficient evidence to rebut SUPERIOR's presumption of ownership over the trademarks. KUNNAN established that SUPERIOR, far from being the rightful owner of the disputed trademarks, was merely KUNNAN's

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hereby REVERSED and SET ASIDE. The Complaint for Infringement of Trademark and Unfair Competition with Preliminary Injunction, docketed as Civil Case No. Q-93-14888, is DISMISSED.

SO ORDERED. *Rollo*, p. 49.

[31] Citing *Phillip Morris v. Court of Appeals*, G.R. No. 91332, July 16, 1993, 224 SCRA 576, 596.

[32] Citing *Emerald Garment Manufacturing Corp. v. Court of Appeals*, G.R. No. 100098, December 29, 1995, 251 SCRA 600, 622-623.

[33] Citing *La Chemise Lacoste, S.A. v. Fernandez*, G.R. Nos. 63796-97 and 65659, May 21, 1984, 129 SCRA 373, 392.

exclusive distributor. This conclusion was based on three pieces of evidence that, to the CA, clearly established that SUPERIOR had no proprietary interest over the disputed trademarks.

First, the CA found that the Distributorship Agreement, considered in its entirety, positively confirmed that SUPERIOR sought to be the KUNNAN's exclusive distributor. The CA based this conclusion on the following provisions of the Distributorship Agreement:

(1) that SUPERIOR was "desirous of [being] appointed as the sole distributor by KUNNAN in the territory of the Philippines;"

(2) that "KUNNAN will appoint the sole distributorship right to Superior in the Philippines;" and

(3) that "no third parties will be permitted to supply KENNEX PRODUCTS in the Philippines except only to Superior."

The CA thus emphasized that the RTC erred in unduly relying on the first whereas clause, which states that "KUNNAN intends to acquire ownership of [the] KENNEX trademark registered by SUPERIOR in the Philippines" without considering the entirety of the Distributorship Agreement indicating that SUPERIOR had been merely appointed by KUNNAN as its distributor.

Second, the CA also noted that SUPERIOR made the express undertaking in the Assignment Agreement to "acknowledge that *KUNNAN is still the real and truthful owner of the [PRO KENNEX] trademarks*," and that it "shall agree that it will *not use the right of the abovementioned trademarks to do anything which is unfavourable or harmful to KUNNAN*." To the CA, these provisions are clearly inconsistent with SUPERIOR's claim of ownership of the disputed trademarks. The CA also observed that although the Assignment Agreement was a private document, its authenticity and due execution was proven by the similarity of Mr. Tan Bon Diong's signature in the Distributorship Agreement and the Assignment Agreement.

Third, the CA also took note of SUPERIOR's Letter dated November 12, 1986 addressed to Brig. Gen. Jose Almonte,

identifying itself as the "*sole and exclusive licensee and distributor* in the Philippines of all its KENNEX and PRO-KENNEX products." Attached to the letter was an agreement with KUNNAN, identifying the latter as the "*foreign manufacturer* of all KENNEX products." The CA concluded that in this letter, SUPERIOR acknowledged its status as a distributor in its dealings with KUNNAN, and even in its transactions with third persons.

Based on these reasons, the CA ruled that SUPERIOR was a mere distributor and had no right to the registration of the disputed trademarks since the right to register a trademark is based on ownership. Citing Section 4 of Republic Act No. 166[34] and established jurisprudence,[35] the CA held that SUPERIOR — as an exclusive distributor — did not acquire any proprietary interest in the principal's (KUNNAN's) trademark.

The CA denied SUPERIOR's motion for reconsideration for lack of merit in its Resolution dated October 4, 2005.

THE PETITION

In the present petition, SUPERIOR raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER SUPERIOR IS NOT THE TRUE AND RIGHTFUL OWNER OF THE TRADEMARKS "KENNEX" AND "PRO-KENNEX" IN THE PHILIPPINES

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[34] The provision states:

> x x x The owner of a trademark, a trade-name or service mark used to distinguish his goods, business or services from the goods, business or services of other shall have the right to register the same. x x x

[35] See *Marvex Commercial Co., Inc. v. Petra Hawpia & Milling Co.*, G.R. No. L-19297, December 22, 1966, 18 SCRA 1178, 1180; *Unno Commercial Enterprises, Inc. v. General Milling Corporation*, G.R. No. L-28554, February 28, 1983, 120 SCRA 804, 808-809; *Gabriel v. Perez*, G.R. No. L-24075, January 31, 1974, 55 SCRA 406.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER SUPERIOR IS A MERE DISTRIBUTOR OF RESPONDENT KUNNAN IN THE PHILIPPINES

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE DECISION OF THE REGIONAL TRIAL COURT OF QUEZON CITY IN CIVIL CASE NO. Q-93-14888, LIFTING THE PRELIMINARY INJUNCTION ISSUED AGAINST RESPONDENTS KUNNAN AND SPORTS CONCEPT AND DISMISSING THE COMPLAINT FOR INFRINGEMENT OF TRADEMARK AND UNFAIR COMPETITION WITH PRELIMINARY INJUNCTION

THE COURT'S RULING

We do not find the petition meritorious.

On the Issue of Trademark Infringement

We first consider the effect of the final and executory decision in the Registration Cancellation Case on the present case. This decision — rendered ***after*** the CA decision for trademark infringement and unfair competition in CA-G.R. CV No. 60777 (root of the present case) — states:

> As to whether respondent Kunnan was able to overcome the presumption of ownership in favor of Superior, the former sufficiently established the fraudulent registration of the questioned trademarks by Superior. The Certificates of Registration No. SR-4730 (Supplemental Register) and 33487 (Principal Register) for the KENNEX trademark were fraudulently obtained by petitioner Superior. Even before PROKENNEX products were imported by Superior into the Philippines, the same already enjoyed popularity in various countries and had been distributed worldwide, particularly among the sports and tennis enthusiasts since 1976. Riding on the said popularity, Superior caused the registration thereof in the Philippines under its name when it knew fully well that it did not own nor did it manufacture the PROKENNEX products. Superior claimed ownership of the subject marks and failed to disclose in its application with the IPO that it was merely a distributor of KENNEX and PROKENNEX products in the Philippines.

While Superior accepted the obligation to assign Certificates of Registration Nos. SR-4730 and 33487 to Kunnan in exchange for the appointment by the latter as its exclusive distributor, Superior however breached its obligation and failed to assign the same to Kunnan. In a letter dated 13 February 1987, Superior, through Mr. Tan Bon Diong, misrepresented to Kunnan that the latter cannot own trademarks in the Philippines. Thus, Kunnan was misled into assigning to Superior its (Kunnan's) own application for the disputed trademarks. In the same assignment document, however. Superior was bound to ensure that the PROKENNEX trademarks under Registration Nos. 40326, 39254, and 49998 shall be returned to Kunnan clean and without any incumbency when requested by the latter.

In fine, We see no error in the decision of the Director General of the IPO which affirmed the decision of the Director of the Bureau of Legal Affairs canceling the registration of the questioned marks in the name of petitioner Superior and denying its new application for registration, upon a finding that Superior is not the rightful owner of the subject marks.

WHEREFORE, the foregoing considered, the petition is DISMISSED.

The CA decided that the registration of the "KENNEX" and "PRO KENNEX" trademarks should be cancelled because SUPERIOR was not the owner of, and could not in the first place have validly registered these trademarks. Thus, as of the finality of the CA decision on December 3, 2007, these trademark registrations were effectively cancelled and SUPERIOR was no longer the registrant of the disputed trademarks.

Section 22 of Republic Act No. 166, as amended ("RA 166"),[36] the law applicable to this case, defines trademark infringement as follows:

Section 22. *Infringement, what constitutes*. — ***Any*** **person who [1]** ***shall*** **use, without the consent of the registrant**, *any* reproduction, counterfeit, copy or colorable imitation **of** ***any***

[36] An Act To Provide For the Registration and Protection of Trademarks, Trade-Names, and Service-Marks, Defining Unfair Competition and False Marking And Providing Remedies Against The Same, And For Other Purposes.

registered mark or trade-name *in connection with* the sale, offering for sale, or advertising of *any* goods, business or services on or *in connection with* which such use is likely to cause confusion or mistake or to deceive purchasers or others *as to* the source or origin of such goods or services, or identity of such business; or [2] reproduce, counterfeit, copy, or colorably imitate *any* such mark or trade-name and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used *upon* or *in connection with* such goods, business or services, *shall* be *liable to* a civil action by the registrant for *any* or *all of* the remedies *herein* provided. [Emphasis supplied]

Essentially, Section 22 of RA 166 states that only a registrant of a mark can file a case for infringement. Corollary to this, Section 19 of RA 166 provides that any right conferred upon the registrant under the provisions of RA 166[37] terminates when the judgment or order of cancellation has become final, *viz*:

Section 19. *Cancellation of registration*. — If the Director finds that a case for cancellation has been made out he shall order the cancellation of the registration. The order shall not become effective until the period for appeal has elapsed, or if appeal is taken, until the judgment on appeal becomes final. **When the order or judgment becomes final, any right conferred by such registration upon the registrant or any person in interest of record shall terminate**. Notice of cancellation shall be published in the Official Gazette. [Emphasis supplied.]

Thus, we have previously held that the cancellation of registration of a trademark has the effect of depriving the registrant of protection from infringement from the moment judgment or order of cancellation has become final.[38]

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[37] Section 20 of RA 166 **considers the trademark registration certificate as *prima facie* evidence of the validity of the registration, the registrant's ownership** and **exclusive right to use** the trademark in connection with the goods, business or services as classified by the Director of Patents and as specified in the certificate, subject to the conditions and limitations stated therein. See *Mighty Corporation v. E. & J. Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473, 495.

[38] See *Heirs of Crisanta Y. Gabriel-Almoradie v. Court of Appeals*, G.R. No. 91385, January 4, 1994, 229 SCRA 15, 32-33.

In the present case, by operation of law, specifically Section 19 of RA 166, the trademark infringement aspect of SUPERIOR's case has been rendered moot and academic in view of the finality of the decision in the Registration Cancellation Case. In short, SUPERIOR is left without any cause of action for trademark infringement since the cancellation of registration of a trademark deprived it of protection from infringement from the moment judgment or order of cancellation became final. To be sure, in a trademark infringement, title to the trademark is indispensable to a valid cause of action and such title is shown by its certificate of registration.[39] With its certificates of registration over the disputed trademarks effectively cancelled with finality, SUPERIOR's case for trademark infringement lost its legal basis and no longer presented a valid cause of action.

Even assuming that SUPERIOR's case for trademark infringement had not been rendered moot and academic, there can be no infringement committed by KUNNAN who was adjudged with finality to be the rightful owner of the disputed trademarks in the Registration Cancellation Case. Even prior to the cancellation of the registration of the disputed trademarks, SUPERIOR — as a mere distributor and not the owner – cannot assert any protection from trademark infringement as it had no right in the first place to the registration of the disputed trademarks. In fact, jurisprudence holds that in the absence of any inequitable conduct on the part of the manufacturer, an exclusive distributor who employs the trademark of the manufacturer does not acquire proprietary rights of the manufacturer, and **a registration of the trademark by the distributor as such belongs to the manufacturer**, provided the fiduciary relationship does not terminate before application for registration is filed.[40] Thus, the CA in the Registration Cancellation Case correctly held:

> As a mere distributor, petitioner Superior undoubtedly had no right to register the questioned mark in its name. Well-entrenched in our jurisdiction is the rule that the right to register a trademark

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[39] *Western Equipment & Supply Co. v. Reyes*, 51 Phil. 115 (1927).

[40] *Gabriel v. Perez*, G.R. No. L-24075, January 31, 1974, 55 SCRA 406.

should be based on ownership. When the applicant is not the owner of the trademark being applied for, he has no right to apply for the registration of the same. Under the Trademark Law, only the owner of the trademark, trade name or service mark used to distinguish his goods, business or service from the goods, business or service of others is entitled to register the same. An exclusive distributor does not acquire any proprietary interest in the principal's trademark and cannot register it in his own name unless it is has been validly assigned to him.

In addition, we also note that the doctrine of *res judicata* bars SUPERIOR's present case for trademark infringement. The doctrine of *res judicata* embraces two (2) concepts: the first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47, and the second is "conclusiveness of judgment" under paragraph (c) thereof.

In the present case, the second concept — conclusiveness of judgment — applies. Under the concept of *res judicata* by **conclusiveness of judgment**, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies ***in all later suits on points and matters determined in the former suit.***[41] Stated differently, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different cause of action.[42] This second branch of the principle of *res*

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[41] RULES OF COURT, Section 47(c), Rule 39 – *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

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(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

See also *Gutierrez v. Court of Appeals*, 193 SCRA 437 (1991).

[42] *Tan v. Court of Appeals*, G.R. No. 142401, August 20, 2001.

judicata bars the re-litigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.[43]

Because the Registration Cancellation Case and the present case involve the same parties, litigating with respect to and disputing the same trademarks, we are bound to examine how one case would affect the other. In the present case, even if the causes of action of the Registration Cancellation Case (the cancellation of trademark registration) differs from that of the present case (the improper or unauthorized use of trademarks), the final judgment in the Registration Cancellation Case is nevertheless conclusive on the particular facts and issues that are determinative of the present case.

To establish trademark infringement, the following elements must be proven: (1) the validity of plaintiff's mark; (2) **the plaintiff's ownership of the mark**; and (3) the use of the mark or its colorable imitation by the alleged infringer results in "likelihood of confusion."[44]

Based on these elements, we find it immediately obvious that the second element — the plaintiff's ownership of the mark — was what the Registration Cancellation Case decided with finality. On this element depended the validity of the registrations that, on their own, only gave rise to the presumption of, but was not conclusive on, the issue of ownership.[45]

In no uncertain terms, **the appellate court in the Registration Cancellation Case ruled that SUPERIOR was a mere distributor and could not have been the owner, and was thus an invalid registrant of the disputed trademarks.** Significantly, these are the exact terms of the ruling the CA arrived at in the present petition now under our review. Thus, whether with one or the other, the ruling on the issue of ownership

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[43] *Mata v. Court of Appeals*, 376 Phil. 525 (1999).

[44] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, G.R. No. 143993, August 18, 2004, 437 SCRA 10.

[45] *Supra* note 31.

of the trademarks is the same. Given, however, the final and executory ruling in the Registration Cancellation Case on the issue of ownership that binds us and the parties, any further discussion and review of the issue of ownership — although the current CA ruling is legally correct and can stand on its own merits — becomes a pointless academic discussion.

On the Issue of Unfair Competition

Our review of the records shows that neither the RTC nor the CA made any factual findings with respect to the issue of unfair competition. In its Complaint, SUPERIOR alleged that:[46]

17. In January 1993, the plaintiff learned that the defendant Kunnan Enterprises, Ltd., is intending to appoint the defendant Sports Concept and Distributors, Inc. as its alleged distributor for sportswear and sporting goods bearing the trademark "PRO-KENNEX." For this reason, on January 20, 1993, the plaintiff, through counsel, wrote the defendant Sports Concept and Distributor's Inc. advising said defendant that the trademark "PRO-KENNEX" was registered and owned by the plaintiff herein.

18. The above information was affirmed by an announcement made by the defendants in The Manila Bulletin issue of January 29, 1993, informing the public that defendant Kunnan Enterprises, Ltd. has appointed the defendant Sports Concept and Distributors, Inc. as its alleged distributor of sportswear and sporting goods and equipment bearing the trademarks "KENNEX and "PRO-KENNEX" which trademarks are owned by and registered in the name of plaintiff herein as alleged hereinabove.

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27. The acts of defendants, as previously complained herein, were designed to and are of the nature so as to create confusion with the commercial activities of plaintiff in the Philippines and is liable to mislead the public as to the nature and suitability for their purposes of plaintiff's business and the defendant's acts are likely to discredit the commercial activities and future growth of plaintiff's business.

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[46] Original Records, pp. 5-8.

From jurisprudence, unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. The essential elements of unfair competition[47] are (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor.[48]

Jurisprudence also formulated the following "true test" of unfair competition: whether the acts of the defendant have the intent of deceiving or are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions of the particular trade to which the controversy relates. One of the essential requisites in an action to restrain unfair competition

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[47] Under Section 29 of RA 166, any person who employs deception or any other means contrary to good faith by which he passes off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who commits any acts calculated to produce said result, is guilty of unfair competition. Unfair competition include the following acts:

a) ***Any* person, who in selling his goods *shall* give them the general appearance of goods of another manufacturer or dealer, either *as to* the goods themselves** or in the wrapping of the packages in which they are contained, **or the devices or words thereon**, or in *any* feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, *other than* the *actual* manufacturer or dealer, or who otherwise clothes the goods with such appearance as *shall* deceive the public and defraud another of his legitimate trade, or *any* subsequent vendor of such goods or *any* agent of *any* vendor engaged in selling such goods with a like purpose;

(b) *Any* person who by *any* artifice, or device, or who *employs any* other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) *Any* person who *shall* make *any* false statement *in the course of* trade or who *shall* commit *any* other act contrary to good faith of a nature calculated to discredit the goods, business or services of another. [Emphasis supplied.]

[48] *Supra* note 42.

is proof of fraud; the intent to deceive, actual or probable must be shown before the right to recover can exist.[49]

In the present case, no evidence exists showing that KUNNAN ever attempted to pass off the goods it sold (*i.e*. sportswear, sporting goods and equipment) as those of SUPERIOR. In addition, there is no evidence of bad faith or fraud imputable to KUNNAN in using the disputed trademarks. Specifically, SUPERIOR failed to adduce any evidence to show that KUNNAN by the above-cited acts intended to deceive the public as to the identity of the goods sold or of the manufacturer of the goods sold. In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*,[50] we held that there can be trademark infringement **without unfair competition** such as when the infringer **discloses on the labels containing the mark that he manufactures the goods, thus preventing the public from being deceived that the goods originate from the trademark owner.** In this case, no issue of confusion arises because the same manufactured products are sold; only the ownership of the trademarks is at issue. Furthermore, KUNNAN's January 29, 1993 notice by its terms prevents the public from being deceived that the goods originated from SUPERIOR since the notice clearly indicated that KUNNAN is the manufacturer of the goods bearing the trademarks "KENNEX" and "PRO KENNEX." This notice states in full:[51]

NOTICE AND WARNING

Kunnan Enterprises Ltd. is the owner and first user of the internationally-renowned trademarks KENNEX and PRO KENNEX for sportswear and sporting goods and equipment. Kunnan Enterprises Ltd. has registered the trademarks KENNEX and PRO KENNEX in the industrial property offices of at least 31 countries worldwide where KUNNAN Enterprises Ltd. has been selling its sportswear and sporting goods and equipment bearing the KENNEX and PRO KENNEX trademarks.

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[49] *Coca-Cola Bottlers, Inc.v. Quintin J. Gomez*, G.R. No. 154491, November 14, 2008.

[50] G. R. No. 143993, August 18, 2004, 437 SCRA 10.

[51] Original Records, p. 14.

Kunnan Enterprises Ltd. further informs the public that it had terminated its Distributorship Agreement with Superior Commercial Enterprises, Inc. on December 31, 1991. As a result, **Superior Commercial Enterprises, Inc. is no longer authorized to sell sportswear and sporting goods and equipment manufactured by Kunnan Enterprises Ltd. and bearing the trademarks KENNEX and PRO KENNEX**.

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In its place, KUNNAN has appointed SPORTS CONCEPT AND DISTRIBUTORS, INC. as its exclusive Philippine distributor of sportswear and sporting goods and equipment bearing the trademarks KENNEX and PRO KENNEX. **The public is advised to buy sporting goods and equipment bearing these trademarks only from SPORTS CONCEPT AND DISTRIBUTORS, INC. to ensure that the products they are buying are manufactured by Kunnan Enterprises Ltd**. [Emphasis supplied.]

Finally, with the established ruling that KUNNAN is the rightful owner of the trademarks of the goods that SUPERIOR asserts are being unfairly sold by KUNNAN under trademarks registered in SUPERIOR's name, the latter is left with no effective right to make a claim. In other words, with the CA's final ruling in the Registration Cancellation Case, SUPERIOR's case no longer presents a valid cause of action. For this reason, the unfair competition aspect of the SUPERIOR's case likewise falls.

WHEREFORE, premises considered, we *DENY* Superior Commercial Enterprises, Inc.'s petition for review on *certiorari* for lack of merit. Cost against petitioner Superior Commercial Enterprises, Inc.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174160. April 20, 2010]

HACIENDA BIGAA, INC., *petitioner, vs.* **EPIFANIO V. CHAVEZ (deceased), substituted by SANTIAGO V. CHAVEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; THE ISSUE OF POSSESSION AS IT RELATES WITH THE OWNERSHIP OF THE DISPUTED PROPERTY, HAS BEEN CONCLUSIVELY RESOLVED IN THE ANTECEDENT CASES.— The case before us inevitably brings to memory the antecedent decided cases touching on the ownership of the vast tract of land in Calatagan, Batangas, covered by **Transfer Certificate of Title (*TCT*) No. 722** in the name/s of Ayala *y* Cia, Alfonso Zobel, Jacobo Zobel and Enrique Zobel and/or Hacienda Calatagan – the predecessors-in-interest of petitioner Hacienda Bigaa. We ruled in the antecedent cases of *Dizon*, *Ayala y Cia*, and *De los Angeles*, that: (1) all expanded subdivision titles issued in the name of Ayala *y* Cia, the Zobels and/or Hacienda Calatagan covering areas beyond the true extent of TCT No. 722 are **null and void** because they cover areas belonging to the public domain; (2) Ayala *y* Cia and the Zobels of Hacienda Calatagan are mere **usurpers** of these public domain areas; and that (3) these areas must **revert** to the Republic. **Significantly, we declared in *De los Angeles* that the Republic, as the rightful owner of the expanded areas – portions of the public domain – has the right to place its lessees and permittees (among them Zoila de Chavez) in possession of the fishpond lots whose ownership and possession were in issue in the case**. These antecedent cases lay to rest the issues of ownership and of possession as an attribute thereof, which we both ruled to be in favor of the Republic and its lessees or permittees. The present case is a stark repetition of scenarios in these cases. The protagonists remain *virtually* the same – with petitioner Hacienda Bigaa taking the place of its predecessors-in-interest Ayala *y* Cia and/or the Zobels of Hacienda Calatagan, and

respondent Epifanio V. Chavez taking the place of his predecessor-in-interest Zoila de Chavez whose possession was under *bona fide* authority from the Republic. Considering that in this case the disputed lots are among those litigated in the antecedent cases and the issues of ownership and possession are again in issue, the principle of *res judicata* inevitably must be considered and applied, if warranted.

2. ID.; ID.; ID.; ID.; TWO (2) CONCEPTS OF *RES JUDICATA*; BAR BY FORMER JUDGMENT; ELEMENTS THAT MUST CONCUR.— The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court. This provision comprehends two distinct concepts of *res judicata*: (1) *bar by former judgment* and (2) *conclusiveness of judgment*. Under the first concept, *res judicata* absolutely bars any subsequent action when the following requisites concur: (a) the former judgment or order was final; (b) it adjudged the pertinent issue or issues on their merits; (c) it was rendered by a court that had jurisdiction over the subject matter and the parties; and (d) between the first and the second actions, there was identity of parties, of subject matter, and of *causes of action.*

3. ID.; ID.; ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT; APPLIES WHERE NO IDENTITY OF CAUSES OF ACTION BUT ONLY IDENTITY OF ISSUES EXIST; ONLY THE IDENTITIES OF PARTIES AND ISSUES ARE REQUIRED UNDER THE PRINCIPLE.— Where no identity of causes of action but only *identity of issues* exists, *res judicata* comes under the second concept – *i.e.*, under **conclusiveness of judgment**. Under this concept, the rule bars the re-litigation of particular facts or issues involving the same parties even if raised under *different* claims or causes of action. Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court

of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of *parties and issues* are required for the operation of the principle of conclusiveness of judgment.

4. ID.; ID.; ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT ESTOPS THE PARTIES FROM RAISING IN A LATER CASE THE ISSUES OR POINTS THAT WERE RAISED AND CONTROVERTED, AND WERE DETERMINATIVE OF THE RULING IN THE EARLIER CASE.— While *conclusiveness of judgment* does not have the same barring effect as that of a *bar by former judgment* that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. In other words, the dictum laid down in the earlier final judgment or order becomes conclusive and continues to be binding between the same parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case.

5. ID.; ID.; ID.; ID.; ID.; IDENTITY OF PARTIES AND SUBJECT MATTER IN CASE AT BAR ARE VIRTUALLY THE SAME AS THOSE IN THE ANTECEDENT CASES.— The parties to the present case are virtually the same as those in the antecedent cases. Specifically in *De los Angeles*, the parties were Enrique Zobel, the predecessor-in-interest of petitioner Hacienda Bigaa, and Zoila de Chavez, the mother and predecessor-in-interest of Chavez. Hacienda Bigaa and Chavez are litigating the same properties subject of the antecedent cases inasmuch as they claim better right of possession to parcels of land covered by subdivision titles derived from Hacienda Calatagan's TCT No. 722 and by government-issued fishpond permits. Specifically in *De los Angeles*, the Zobels and Zoila de Chavez litigated the disputed lots covered by subdivision titles in Zobel's name and by fishpond permits the Republic issued in favor of de Chavez. In ruling that the subject lots are the same lots litigated in the previously decided cases, the courts below based their findings on *De los Angeles* that

in turn was guided by our rulings in *Dizon* and *Ayala y Cia*. For emphasis, we reiterate our ruling in *De los Angeles*: **all areas the Ayalas and/or the Zobels made to appear to be covered by TCT No. 722 are owned by the Republic because they form part of the public domain; specifically, portions of the navigable water or of the foreshores of the bay converted into fishponds are parts of the public domain that cannot be sold by the Ayalas and/or the Zobels to third parties**. In his answer before the MTC, Chavez asserted that the areas covered by the fishpond permits of Zoila de Chavez are the same parcels of land that he now occupies as Zoila's successor-in-interest. Given the rulings in the antecedent cases that Chavez invoked, Hacienda Bigaa never bothered to object to or to rebut this allegation to show that the presently disputed lots are not part of the expanded areas that, apart from the specifically described titles, *Ayala y Cia* described as "other subdivision titles" covering unregisterable lands of the public domain that must revert to the Republic. **Hacienda Bigaa should have objected as we held in *De los Angeles* that the onus is on Ayala and the Zobels – Hacienda Bigaa's predecessors-in-interest – to show that their titles do not cover the expanded areas whose titles were declared null and void**. We find no cogent reason to depart from our past rulings in the antecedent cases, and from the ruling of the courts below in this case that the lots claimed by Hacienda Bigaa are the same lots covered by our rulings in the antecedent cases.

6. ID.; ID.; ID.; ID.; ID.; IDENTITY OF ISSUES; THE PRESENT CASE AND THE ANTECEDENT CASES ALL INVOLVE THE ISSUE OF OWNERSHIP AND BETTER RIGHT OF POSSESSION.— This case and the antecedent cases all involve the issue of **ownership or better right of possession**. In *Ayala y Cia*, we affirmed an RTC decision that decreed: WHEREFORE, judgment is hereby rendered as follows: (a) Declaring as null and void Transfer Certificate of Title No. T-9550 (or Exhibit "24") of the Register of Deeds of the Province of Batangas and ***other subdivision titles*** *issued in favor of Ayala y Cia and;or Hacienda de Calatagan over the areas outside* its private land covered by TCT No. 722, which, including the lots in T-9550 (lots 360, 362, 363 and 182) are hereby *reverted to public dominion*. Consequently, lots and their titles derived from the Ayala's and the Zobels' TCT No. 722 not

shown to be within the original coverage of this title are conclusively public domain areas and their titles will be struck down as nullities. Thus, *De los Angeles* effectively annulled the subdivision titles disputed in the case for being among the "other subdivision titles" declared void for covering public domain areas, and ordered their reversion to the Republic. *De los Angeles* recognized, too, the **right of the Republic's lessees and public fishpond permittees (among them Zoila de Chavez, mother and predecessor-in-interest of Chavez) to possess the fishpond lots in question because they derive their right of possession from the Republic – the rightful owner of these lots.** We reject, based on these discussions, Hacienda Bigaa's position that there could be no *res judicata* in this case because the present suit is for forcible entry while the antecedent cases adverted were based on different causes of action – *i.e.*, quieting of title, annulment of titles and *accion reinvindicatoria*. For, *res judicata*, under the concept of conclusiveness of judgment, operates even if no absolute identity of causes of action exists. *Res judicata*, in its conclusiveness of judgment concept, merely requires identity of issues. We thus agree with the uniform view of the lower courts – the MTC, RTC and the CA – on the application of *res judicata* to the present case.

7. CIVIL LAW; LAND TITLES AND DEEDS; PETITIONER'S TITLES CARRY NO PROBATIVE VALUE.— Hacienda Bigaa contends that the rulings in the antecedent cases on the nullity of its subdivision titles should not apply to the present case because the titles – TCT Nos. 44695 and 56120 – have not been specifically declared void by court order and must be given probative value. It likewise posits that Chavez failed to introduce evidence before the MTC that the land subject matter of the suit is the same land covered by the decision of the Supreme Court in the antecedent cases. We reject this contention in light of our holding in the *Ayala y Cia* and *De los Angeles* cases that apart from those expressly litigated and annulled, all "other subdivision titles" over the excess areas of Hacienda Calatagan must be nullified for covering unregisterable lands of the public domain that must revert to the Republic. **To reiterate, lots and their titles derived from the Ayala's and the Zobels' TCT No. 722 not shown to be within the original coverage of this title are conclusively public domain areas and their titles will be**

struck down as nullities. What could have saved Hacienda Bigaa, as successor-in-interest of the Ayalas and the Zobels, is competent evidence that the subdivision titles in its possession do not fall within the excess areas of TCT No. 722 that are null and void because they are lands of the public domain. **Hacienda Bigaa however failed to discharge this burden**.

8. ID.; ID.; THE REGISTRATION OF LANDS OF THE PUBLIC DOMAIN UNDER THE TORRENS SYSTEM, BY ITSELF, CANNOT CONVERT PUBLIC LANDS INTO PRIVATE; THE ISSUANCE OF TITLES IN PETITIONER'S FAVOR DOES NOT REDEEM IT FROM THE STATUS OF A USURPER.— Hacienda Bigaa – like its predecessors-in-interests, the Ayalas and the Zobels – is a mere usurper in these public lands. The registration in Hacienda Bigaa's name of the disputed lots does not give it a better right than what it had prior to the registration; the issuance of the titles in its favor does not redeem it from the status of a usurper. We so held in *Ayala y Cia* and we reiterated this elementary principle of law in *De los Angeles*. The registration of lands of the public domain under the Torrens system, by itself, cannot convert public lands into private lands.

9. ID.; PROPERTY; OWNERSHIP; PETITIONER CAN NEVER HAVE A BETTER RIGHT OF POSSESSION OVER THE SUBJECT LOTS ABOVE THAT OF THE REPUBLIC BECAUSE THE LOTS PERTAIN TO THE PUBLIC DOMAIN AND ALL ATTRIBUTES OF OWNERSHIP INCLUDING THE RIGHT TO POSSESS AND USE THE LANDS ACCRUE TO THE REPUBLIC.— Hacienda Bigaa can never have a better right of possession over the subject lots above that of the Republic because the lots pertain to the public domain. All lands of the public domain are owned by the State – the Republic. Thus, all attributes of ownership, including the right to possess and use these lands, accrue to the Republic. Granting Hacienda Bigaa the right to possess the subject premises would be equivalent to "condoning an illegal act" by allowing it to perpetuate an "affront and an offense against the State" – *i.e.*, occupying and claiming as its own lands of public dominion that are not susceptible of private ownership and appropriation.

10. ID.; ID.; ID.; PRESENT CASE SHOULD WRITE *FINIS* TO PETITIONER'S CLAIM THAT ITS TITLES ARE BEYOND

THE REACH OF THE COURT'S DECISION IN THE ANTECEDENT CASES.— As our last word, we find it particularly relevant to state here that we issued on October 6, 2008 a Resolution in relation with the execution of our decision in the antecedent cases of *Ayala y Cia* and *De los Angeles*. In this Resolution, we emphasized that the decision we consistently affirmed ordered the following: ***(1) the nullification of all subdivision titles that were issued in favor of Ayala y Cia and/or Hacienda Calatagan (and their successors-in-interest) over the areas outside its private land covered by TCT No. 722; and (2) the declaration that all lands or areas covered by these nullified titles are reverted to the public domain.*** This should write *finis* to Hacienda Bigaa's claim that its titles are beyond the reach of our decision in the antecedent cases. In sum, we find no reversible errors of law in the appealed decision of the Court of Appeals.

APPEARANCES OF COUNSEL

Dionisio N. Capistrano for petitioner.
Sabrina J. Samonte for respondent.

D E C I S I O N

BRION, *J.*:

This petition for review on *certiorari*[1] challenges the Court of Appeals (*CA*) decision of May 31, 2001[2] and resolution of August 2, 2006[3] in CA-G.R. SP No. 46176, affirming *in toto* the judgments of both the Municipal Trial Court (*MTC*) of Calatagan and the Regional Trial Court (*RTC*) of Batangas dismissing the complaint for forcible entry in Civil Case No. 129.

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[1] Under Rule 45 of the RULES OF COURT, *rollo* pp. 10-51.

[2] In CA-G.R. SP No. 46716, rendered by the Seventeenth Division through Associate Justice Salvador J. Valdez, Jr. and concurred in by Associate Justices Wenceslao I. Agnir, Jr. and Juan Q. Enriquez, Jr.; *id.* at 120-131.

[3] Rendered by the Special Former Seventeenth Division, penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Edgardo P. Cruz and Vicente Q. Roxas; *id.* at 161-163.

THE FACTS

We summarize below the factual antecedents of the present case based on the records before us.

On June 5, 1996, petitioner Hacienda Bigaa, Inc. (*Hacienda Bigaa)* filed with the Municipal Trial Court (*MTC*) of Calatagan, Batangas a complaint[4] for ejectment (***forcible entry***) and damages with application for writ of preliminary injunction against respondent Epifanio V. Chavez (*Chavez*), docketed as Civil Case No. 129. The complaint alleged that Chavez, by force, strategy and/or stealth, entered on April 29, 1996 the premises of Hacienda Bigaa's properties covered by Transfer Certificate of Title (*TCT*) Nos. 44695 and 56120 by cutting through a section of the barbed wire fence surrounding the properties and destroying the lock of one of its gates, subsequently building a house on the property, and occupying the lots without the prior consent and against the will of Hacienda Bigaa.

The records show that the lots were originally covered by **TCT No. 722** owned by Ayala *y* Cia[5] and/or Alfonso, Jacobo and Enrique Zobel, with an area of 9,652.583 hectares, known as Hacienda Calatagan. Ayala and/or the Zobels *expanded* TCT No. 722 to cover an additional 2,000 hectares of land consisting, *among others*, of beach, foreshore and bay areas, and navigable waters (*excess areas*), making it appear that these excess areas are part of Hacienda Calatagan's TCT No. 722. The Ayalas and/or the Zobels later ordered the subdivision of the *hacienda*, including these excess areas, and sold the subdivided lots to third parties.[6]

Among the buyers or transferees of the expanded and subdivided areas was Hacienda Bigaa which caused the issuance of titles – TCT Nos. 44695 and 56120 – under its name covering the purchased subdivided areas. Thus, in his answer before the

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[4] *Rollo*, pp. 62-67.

[5] For convenience, the abbreviation of "Compania" or "Cia." shall be written simply as "Cia" without a period.

[6] Decision of the Municipal Trial Court, September 4, 1996, *rollo*, pp. 68-83.

MTC of Calatagan, then defendant (now respondent) Epifanio V. Chavez alleged that then plaintiff (now petitioner) Hacienda Bigaa is the *successor-in-interest* of Ayala *y* Cia, Hacienda Calatagan, Alfonso Zobel, Jacobo Zobel and Enrique Zobel – the original titular owners of TCT No. 722.

Portions of the same lands – foreshore lands – were leased out by the Republic, through the Bureau of Fisheries, to qualified applicants in whose favor fishpond permits were issued. The government-issued fishpond permits pertaining to lands covered by titles derived from TCT No. 722 of Ayala *y* Cia and/or the Zobels, gave rise to ownership and/or possessory disputes between the owners of Hacienda Calatagan and their privies and/or successors-in-interest, on the one hand, and the Republic or its lessees or fishpond permittees, on the other.

Suits were filed in various courts in Batangas for the recovery of the areas in excess of the area originally covered by TCT No. 722, which suits ultimately reached the Supreme Court. In the Court's 1965 decisions in *Dizon v. Rodriguez*[7] (for quieting of title) and *Republic v. Ayala y Cia and/or Hacienda Calatagan, et al.*[8] (for annulment of titles), the excess areas of TCT No. 722 were categorically declared as **unregisterable lands of the public domain** such that any title covering these excess areas are necessarily null and void. In these cases, the Ayalas and the Zobels were found to be mere **usurpers** of public domain areas, and all subdivision titles issued to them or their privies and covering these areas were invalidated; the wrongfully registered public domain areas **reverted to the Republic**. In *Dizon*, the Court declared as void the Zobels' TCT No. 2739 and its derivative titles covering subdivision Lots 1 and 49 – areas sold to the Dizons – as areas in excess of TCT No. 722 and are properly part of the public domain. In *Ayala y Cia*, the Court invalidated TCT No. 9550 and "*all other subdivision titles*" issued in favor of Ayala *y* Cia and/or the Zobels of Hacienda Calatagan over the areas outside its private land covered by

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[7] 121 Phil. 681 (1965).

[8] 121 Phil. 1052 (1965).

TCT No. 722. These areas, including the lots covered by TCT No. 9550, reverted to public dominion.[9]

The pronouncement in the above cases led to the Court's 1988 decision in *Republic v. De los Angeles*,[10] a case covering the same excess areas under a reinvindicatory claim of the Republic aimed at recovering lands usurped by the Ayalas and the Zobels and at placing the Republic's lessees and fishpond permittees in possession. The Court effectively held that as owner of the excess lands, the Republic has the right to place its lessees and fishpond permittees — among them Zoila de Chavez, predecessor-in-interest of Chavez — in possession. The Court invalidated TCT Nos. 3699 and 9262 for being among the "*other subdivision titles*" declared void and ordered reverted to public dominion.

To return to the forcible entry case, then defendant (now respondent) Chavez alleged in his answer before the MTC of Calatagan that his mother, Zoila de Chavez (who died intestate on September 14, 1979) was a fishpond permittee/lessee under Fishpond Permit Nos. F-4572-0 and F-24735 issued by the Bureau of Fisheries on April 21, 1959 and June 3, 1966, respectively; that the areas covered by the permits are the same parcels of land which he presently occupies as Zoila's successor-in-interest and which Hacienda Bigaa also claims.

Chavez likewise asserted that Hacienda Bigaa is the successor-in-interest of Ayala *y* Cia, Hacienda Calatagan, Alfonso Zobel, Jacobo Zobel and Enrique Zobel who owned land with an area of 9,652.583 hectares, covered by TCT No. 722 in the Registry of Deeds of Batangas; that Ayala *y* Cia, the Zobels, or Hacienda Calatagan, illegally expanded the original area of TCT No. 722

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[9] *Ibid.*

[10] G.R. No. L-30240, March 25, 1988, 159 SCRA 264; this case originated from an *accion reinvidicatoria* with preliminary injunction filed by the Republic against Zobel for cancellation of Zobel's void subdivision titles and the reconveyance of the same to the government; to place the fishpond permittees – Zoila de Chavez included – in peaceful and adequate possession thereof. In his Answer with counterclaim, Zobel argued that he has a valid title to the lands. The RTC dismissed the complaint and found for Zobel as regards his counterclaim. We reversed the RTC.

by 2,000 hectares; that suits were filed to recover the expanded area; that these suits reached the Supreme Court which declared that these excess areas are part of the public domain and ordered their reversion to the Republic; that the Supreme Court likewise declared certain TCTs covering the subdivision lots outside the area of TCT No. 722 and issued to transferees as null and void; therefore, Hacienda Bigaa's titles – TCT Nos. 44695 and 56120 – carry no probative value as they are of dubious origins and have been nullified by the Supreme Court.[11]

Chavez further argued that the suit is barred by prior judgment in two prior cases – (1) Civil Case No. 78, a suit for unlawful detainer filed by the Zobels against Chavez's predecessor-in-interest, Zoila de Chavez, before the then Justice of the Peace Court (now Municipal Trial Court) of Calatagan, Batangas; and (2) Civil Case No. 653, a case of *accion reinvindicatoria* with prayer for preliminary mandatory injunction filed by the Republic, Zoila de Chavez, and other lessees or fishpond permittees of the Republic, against Enrique Zobel (Hacienda Bigaa's predecessor-in-interest) before the then Court of First Instance of Batangas. This case reached this Court as G.R. No. L-30240 entitled "*Republic of the Philippines v. De los Angeles, Enrique Zobel, et al.*"[12] and was decided in 1988. Chavez asserts that the subject matter and the issues involved in these cases are squarely similar and/or identical to the subject matter and issues involved in the present forcible entry suit; the rulings in these two cases, therefore constitute *res judicata* with respect to the present case.

The MTC held a preliminary conference where the parties stipulated and identified the issues in the forcible entry case, *viz*: (1) who between the parties has a **better right of possession** over the premises in question; (2) whether there is ***res judicata***; and (3) whether the parties are entitled to damages.[13] These are essentially the same basic issues that are before us in the present petition.

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[11] Decision of the Municipal Trial Court, *infra* note 13, at 71.

[12] *Supra* note 9.

[13] Decision of the Municipal Trial Court, *infra*, at 73.

The MTC, the RTC and the CA's Decision

The MTC rendered a decision[14] dismissing Hacienda Bigaa's complaint, holding that the disputed lots form part of the areas illegally expanded and made to appear to be covered by TCT No. 722 of Hacienda Bigaa's predecessors-in-interest (Ayala *y* Cia and/or the Zobels of Hacienda Calatagan); hence, the *Hacienda*'s title are null and void. In so ruling, the MTC applied this Court's pronouncements in the antecedent cases of *Dizon v. Rodriguez*,[15] *Republic v. Ayala y Cia and/or Hacienda Calatagan, Zobel, et al.*,[16] and *Republic v. De los Angeles*.[17]

The MTC added that since Hacienda Bigaa did not present proof to counter Chavez's claim that the disputed lots form part of the illegally expanded areas of Hacienda Calatagan, these lots are deemed to be the same lots litigated in the previous cases. The MTC also found prior possession in favor of Chavez, as revealed by the antecedent cases — particularly, *De los Angeles* where Chavez's mother, Zoila de Chavez, had been *ousted* by the Zobels from the fishpond lots she occupied. The MTC reasoned out that Zoila could not have been ousted from the premises had she not been in prior possession. Since Epifanio succeeded Zoila in the possession of the property, he inherited the latter's prior possession and cannot now be ousted by Hacienda Bigaa.

The MTC likewise *rejected* Hacienda Bigaa's contention that the subdivision titles covering the disputed lots — TCT Nos. 44695 and 56120 which *were not specifically canceled by the previous decisions* of the Court — should be given probative value. The MTC ruled that the subsequent issuance of a certificate of title in favor of the plaintiff does not vest title on it as the lands belong to the public domain and cannot be registered.[18] The MTC stressed that the titles of Hacienda Bigaa were among the "other subdivision titles" declared void in the case of *Ayala*

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[14] *Rollo*, pp. 68-83.

[15] *Supra* note 7.

[16] *Supra* note 8.

[17] *Supra* note 10.

[18] See note 13, at 77-78.

y Cia as areas not legitimately covered by TCT No. 722 and which are therefore part of the public domain. As ordered in the three antecedent cases of *Dizon*,[19] *Ayala y Cia*,[20] and *De los Angeles*,[21] they should revert to the Republic. The MTC opined that Hacienda Bigaa has the burden of proving that the subject lots are not part of the illegally expanded areas; Hacienda Bigaa failed to discharge this duty when it did not present proof to controvert Chavez's allegation that the lots covered by Hacienda's TCTs are among the lots litigated in the cited cases. The MTC reiterated the following ruling of the Court in *Republic v. De los Angeles*:

> x x x [F]or almost 23 years now execution of the 1965 final judgment in G.R. No. L-20950, ordering the cancellation of the subdivision titles covering the expanded areas outside the private lands of Hacienda Calatagan, is being frustrated by respondent Zobel, the Ayala and/or Hacienda Calatagan. As a consequence, the mass usurpation of lands of public domain consisting of portions of the territorial sea, the foreshore, beach and navigable water bordering the Balayan Bay, Pagaspas Bay and the China Sea, still remain unabated. The efforts of Ayala and Zobel to prevent execution of said final judgment are evident from the heretofore-mentioned technical maneuvers they have resorted to.
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> Clearly, the burden of proof lies on respondent Zobel and other transferees to show that his subdivision titles are not among the unlawful expanded subdivision titles declared null and void by the said 1965 judgment. **Respondent Zobel not only did not controvert the Republic's assertion that his titles are embraced within the phrase "other subdivision titles" ordered canceled but failed to show that the subdivision titles in his name cover lands within the original area covered by Ayala's TCT No. 722 (derived from OCT No. 20) and not part of the beach, foreshore and territorial sea belonging and ordered reverted to public dominion in the aforesaid 1965 judgment.**[22] x x x (Emphasis supplied.)

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[19] *Supra* note 7.

[20] *Supra* note 8.

[21] *Supra* note 10.

[22] *Supra* note 13, at 78-79, citing *Republic v. De los Angeles*; *supra* note 10, at 284 and 287.

Based on the above disquisition and taking into account the consistent efforts of Hacienda Bigaa's predecessors-in-interest in "thwarting the execution" of the Court's decision in the antecedent cases, the MTC declared that the Chavezes, as the Republic's lessees/permittees, should have been in possession long ago. The MTC held:

> Thus, the court holds that the land now in litigation forms part of the public dominion which properly belongs to the State. Suffice it to say that **when the defendant [*Epifanio V. Chavez*] entered and occupied the same on April 29, 1996, it was in representation of the State being the successor-in-interest of Zoila de Chavez, a government fishpond permittee and/or lessee.** It should be recounted that Zoila de Chavez was in actual physical possession of the land until she was ousted by Enrique Zobel by bulldozing and flattening the area.
>
> The recovery of this public land in favor of the State is long overdue. **Zoila de Chavez or her successor-in-interest should have been in actual and adequate possession and occupation thereof long time ago by virtue of the Supreme Court decisions anent the matter in 1965 which were reiterated in 1988 had not the plaintiff and its predecessors-in-interest succeeded in defeating the enforcement of the said decisions.** To allow the plaintiff to retain possession of these usurped public lands by ousting the government's fishpond permittees and/or lessees such as the defendant is to further frustrate the decisions of the Supreme Court on the matter. (Emphasis supplied.)

The MTC finally ruled that the elements of *res judicata* are present. The forcible entry case before it shared an **identity of parties** with Civil Case No. 78 for unlawful detainer and Civil Case No. 653 (the *Delos Angeles* case) of *accion reinvindicatoria* because all of these cases involve the predecessors-in-interest of the present parties. In Civil Case No. 78, the plaintiff was Enrique Zobel, predecessor of Hacienda Bigaa, and the defendant was Zoila de Chavez, mother and predecessor of Epifanio V. Chavez. In Civil Case No. 653 which reached and was decided by this Court in 1988 as *Republic vs. De los Angeles*, Zoila de Chavez was one of the plaintiffs

and Enrique Zobel was one of the defendants.[23] The MTC also found **identity of subject matter** because the forcible entry case shared with the previous cases the same subject matter, *i.e.*, the same lands adjudged by the Supreme Court as part of the public domain usurped by the Zobels, *et al.* through their illegally expanded titles.[24] As to **identity of causes of action**, the MTC held that although the previous cases were for unlawful detainer and *accion reinvindicatoria* while the case before it was for forcible entry, an **identity of issues existed** because all these cases involved *conflicting claims of ownership, occupation and possession of the property* which have long been settled by the Supreme Court. It recognized that under the concept of conclusiveness of judgment, *res judicata* merely requires an identity of issue, not an absolute identity of causes of action.[25]

On October 1, 1996, Hacienda Bigaa appealed the MTC's decision to the Regional Trial Court (*RTC*) of Batangas[26] which affirmed *in toto* the appealed decision.

On February 16, 1998, Hacienda Bigaa filed its petition for review[27] with the Court of Appeals (CA), docketed as CA-G.R. SP No. 46716. The CA in its decision of June 1, 2001 dismissed the petition for review, totally affirming the RTC and MTC decisions.[28] Hacienda Bigaa timely filed a motion for reconsideration. However, while the motion was pending, Associate Justice Salvador J. Valdez, Jr., the *ponente* of the decision sought to be reconsidered, retired from the Judiciary. As a result, the motion "slipped into hibernation" for five years.[29]

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[23] See note 13, at 80.

[24] *Ibid.*

[25] *Id.* at 81-82.

[26] Branch IX.

[27] *Supra* note 1.

[28] *Supra* note 2.

[29] Petition for Review; *supra* note 1, at 29.

The CA, on August 2, 2006, this time through Associate Justice Juan Q. Enriquez, Jr., rendered its resolution on the motion for reconsideration.[30] It denied reconsideration on the reasoning that the grounds and arguments raised were mere iterations of those already raised in the petition for review.

THE PETITION

Hacienda Bigaa is now before us *via* a petition for review under Rule 45 of the Rules of Court to assail the CA ruling. Among other things, it argues that the CA's Resolution is patently erroneous because the grounds and arguments raised in its motion for reconsideration were not mere reiterations; it claims, as one of the grounds in its motion for reconsideration, that the "final determination of the scope and extent" of the area allegedly in excess of that covered by TCT No. 722 of Ayala *y* Cia — was made only after the petition for review was filed on February 16, 1998.

In its petition, Hacienda Bigaa raises the following issues of law:

I. WHETHER THE REGISTERED OWNER OF LAND IN POSSESSION OF A TORRENS CERTIFICATE OF TITLE MUST ENJOY THE OWNERSHIP AND POSSESSION, AMONG OTHERS, OF THE LAND COVERED THEREBY, WHERE THE SAID TITLE HAS NOT BEEN DECLARED NULL AND VOID, SUCH THAT THE TITLE MUST BE GIVEN PROBATIVE VALUE.

II. WHETHER IT IS PETITIONER HACIENDA BIGAA OR ZOILA DE CHAVEZ (OR HER SUCCESSOR, RESPONDENT EPIFANIO V. CHAVEZ) WHO HAS A BETTER RIGHT OF POSSESSION OVER THE SUBJECT LOTS.

THE COURT'S RULING

We find the petition unmeritorious.

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[30] *Supra* note 3.

We note at the outset that the objection on the delineation of the scope and extent of the excess areas of TCT No. 722 came too late in the day; it is an issue that the Hacienda admits to have raised for the first time when it sought reconsideration of the CA decision. We significantly note, too, that this issue involves a question of fact whose determination is improper in a Rule 45 proceeding before this Court.

Thus, to our mind, the only real questions appropriate for resolution at this stage of the case are: (1) Do the TCTs of Hacienda Bigaa have probative value in determining the issues of ownership and possession of the disputed lots? (2) Is Chavez — as successor-in-interest of government lessee or fishpond permittee Zoila de Chavez — entitled to possession of these lots? In these lights, the resolution of this case hinges on the question of better title — who, between the petitioner and the respondent, has the better right of possession of the disputed lots.

Are these issues misplaced in a forcible entry case?

To answer this, we hark back to the origins of the present case — a complaint for **forcible entry** that the MTC of Calatagan, Batangas dismissed. Both the RTC and the CA subsequently affirmed this dismissal. As a forcible entry suit, the threshold question presented is: was the prior possession of the then plaintiff (now petitioner) Hacienda Bigaa over the disputed lots sufficiently established to give it cause for the ejectment of then defendant (now respondent) Epifanio Chavez?

We recall in this regard that the MTC issued a pre-trial order identifying the issues of (1) who has the better right of possession; and (2) *res judicata*.[31] On the issue of possession, the MTC found the need to determine the question of title or ownership in passing upon the question of possession after Chavez raised the issue of ownership at that level. As a general rule in forcible entry cases, ownership or title is inconsequential; the primordial

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[31] Decision of the Municipal Trial Court, *supra* note 13, at 73; see p. 5 of this decision.

issue is possession *de facto* and not possession *de jure*. The court, however, may tackle the issue of ownership or title, if raised, if this issue is indispensable in resolving the issue of possession.[32] Since Chavez raised the question of ownership or title in his answer, the issue of ownership became a material consideration in the lower court's inquiry into the character, nature and extent of the parties' claimed possession.

The MTC tackled the issue of prior possession by taking judicial notice of our factual determination in *De los Angeles* that Zobel of Hacienda Calatagan – Hacienda Bigaa's predecessor-in-interest — had **ousted** Zoila de Chavez — Chavez's predecessor-in-interest — from the lots she occupied as a holder of government-issued fishpond permits. The MTC in this regard held —

> [T]he court holds that the land now in litigation forms part of the public dominion which properly belongs to the State. Suffice it to say that when [respondent Chavez] entered and occupied the [premises] on April 29, 1996, it was **in representation of the State being the successor-in-interest of Zoila de Chavez**, a government fishpond permittee and/or lessee. It should be recounted that **Zoila de Chavez was in actual physical possession of the land until she was ousted by Enrique Zobel by bulldozing and flattening the area**. (Emphasis supplied.)

Zoila de Chavez's ouster from the premises became the basis of the MTC's conclusion that she had prior possession as she could not have been *ousted* from the premises had she not been in prior possession. This point was reiterated in the present petition by Chavez who died pending the resolution of this case

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[32] *Wilmon Auto Supply v. Court of Appeals*, G.R. No. 97637, April 10, 1992, 208 SCRA 108; see also Sec. 33 (2), Batas Pambansa Bilang 129, eff. Aug. 14, 1981, otherwise known as "The Judiciary Reorganization Act of 1980," which provides that the Municipal Trial Court, among others, has "x x x [e]xclusive original jurisdiction over cases of forcible entry and unlawful detainer: *Provided*, That when, in such cases the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession; x x x"

and has been substituted by his brother, Santiago V. Chavez.[33] The respondent's comment before us states:[34]

> Of note, as hereafter shown, [in the case of *Republic vs. De los Angeles*, G.R. No. L-30240, March 25, 1988], the Supreme Court explicitly recognized the priority of possession of the respondent [Chavez] over the subject lots:
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> > **[Respondent therein] Zobel had ousted Zoila de Chavez, a government fishpond permittee, from a portion of subject fishpond lot** described as Lot 33 of Plan Swo-30999 (also known as Lots 55 and 56 of subdivision TCT No. 3699) by bulldozing the same, and [threatening] to eject fishpond permittees Zoila de Chavez, Guillermo Mercado, Deogracias Mercado, and Rosendo Ibañez from their respective fishpond lots described as Lots 4, 5, 6, and 7, and Lots 55 and 56, of Plan Swo-30999, embraced in the void subdivision titles TCT No. 6399 and TCT No. 9262 claimed by said respondent. Thus, on August 2, 1967, the Republic filed an Amended Complaint captioned "Accion Reinvindicatoria with Preliminary Injunction" against respondent Zobel and the Register of Deeds of Batangas, docketed as Civil Case No. 653, for cancellation of Zobel's void subdivision titles TCT No. 3699 and TCT No. 9262 and the reconveyance of the same to the government; to place aforenamed fishpond permittees in peaceful and adequate possession thereof; to require respondent Zobel to pay back rentals to the Republic, and to enjoin said respondent from usurping and exercising further acts of dominion and ownership over the subject land of public domain.[35] (Emphasis supplied.)

This argument on the direct issue of prior possession is separate from the issue of ownership that Chavez raised as an issue determinative of possession. The issue of ownership shifts our determination to who, between the parties, has title and the concomitant right of possession to the disputed lots.

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[33] Notice of Death and Substitution of Party Respondent, *rollo*, pp. 205-206, received by this Court on February 23, 2007.

[34] Comment of Respondent Chavez, *id.* at 209-222.

[35] *Id.* at 212-213, citing *Republic v. De los Angeles*; *supra* note 10, at 274-275.

The issue of possession, as it relates with the ownership of the disputed property, has been conclusively resolved in the antecedent cases.

As framed above, the case before us inevitably brings to memory the antecedent decided cases touching on the ownership of the vast tract of land in Calatagan, Batangas, covered by **Transfer Certificate of Title (*TCT*) No. 722** in the name/s of Ayala *y* Cia, Alfonso Zobel, Jacobo Zobel and Enrique Zobel and/or Hacienda Calatagan — the predecessors-in-interest of petitioner Hacienda Bigaa. We ruled in the antecedent cases of *Dizon*,[36] *Ayala y Cia*,[37] and *De los Angeles*,[38] that: (1) all expanded subdivision titles issued in the name of Ayala *y* Cia, the Zobels and/or Hacienda Calatagan covering areas beyond the true extent of TCT No. 722 are **null and void** because they cover areas belonging to the public domain; (2) Ayala *y* Cia and the Zobels of Hacienda Calatagan are mere **usurpers** of these public domain areas; and that (3) these areas must **revert** to the Republic. **Significantly, we declared in *De los Angeles* that the Republic, as the rightful owner of the expanded areas — portions of the public domain — has the right to place its lessees and permittees (among them Zoila de Chavez) in possession of the fishpond lots whose ownership and possession were in issue in the case**.

These antecedent cases lay to rest the issues of ownership and of possession as an attribute thereof, which we both ruled to be in favor of the Republic and its lessees or permittees.

The present case is a stark repetition of scenarios in these cases. The protagonists remain *virtually* the same — with petitioner Hacienda Bigaa taking the place of its predecessors-in-interest Ayala *y* Cia and/or the Zobels of Hacienda Calatagan, and respondent Epifanio V. Chavez taking the place of his predecessor-in-interest Zoila de Chavez whose possession was

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[36] *Supra* note 7.

[37] *Supra* note 8.

[38] *Supra* note 10.

under *bona fide* authority from the Republic. Considering that in this case the disputed lots are among those litigated in the antecedent cases and the issues of ownership and possession are again in issue, the principle of *res judicata* inevitably must be considered and applied, if warranted.

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, which in its relevant part reads:

> Sec. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> x x x x x x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

This provision comprehends two distinct concepts of *res judicata*: (1) *bar by former judgment* and (2) *conclusiveness of judgment*. Under the first concept, *res judicata* absolutely bars any subsequent action when the following requisites concur: (a) the former judgment or order was final; (b) it adjudged the pertinent issue or issues on their merits; (c) it was rendered by a court that had jurisdiction over the subject matter and the parties; and (d) between the first and the second actions, there was identity of parties, of subject matter, and of *causes of action*.[39]

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[39] *Sta. Lucia Realty and Development v. Cabrigas*, 411 Phil. 369 (2001).

Where no identity of causes of action but only *identity of issues* exists, *res judicata* comes under the second concept — *i.e.*, under **conclusiveness of judgment**. Under this concept, the rule bars the re-litigation of particular facts or issues involving the same parties even if raised under *different* claims or causes of action.[40] Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of *parties and issues* are required for the operation of the principle of conclusiveness of judgment.[41]

While *conclusiveness of judgment* does not have the same barring effect as that of a *bar by former judgment* that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case.[42] In other words, the dictum laid down in the earlier final judgment or order becomes conclusive and continues to be binding between the same parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later

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[40] *Ibid.*

[41] *Calalang v. Register of Deeds*, G.R. No. 76265, March 11, 1994, 231 SCRA 88.

[42] *Camara v. Court of Appeals*, 369 Phil. 858, 868 (1999).

case since the issue has already been resolved and finally laid to rest in the earlier case.[43]

a. Identity of Parties

As already stated above, the parties to the present case are virtually the same as those in the antecedent cases. Specifically in *De los Angeles*, the parties were Enrique Zobel, the predecessor-in-interest of petitioner Hacienda Bigaa, and Zoila de Chavez, the mother and predecessor-in-interest of Chavez.

b. Identity of Subject Matter

Hacienda Bigaa and Chavez are litigating the same properties subject of the antecedent cases inasmuch as they claim better right of possession to parcels of land covered by subdivision titles derived from Hacienda Calatagan's TCT No. 722 and by government-issued fishpond permits. Specifically in *De los Angeles*, the Zobels and Zoila de Chavez litigated the disputed lots covered by subdivision titles in Zobel's name and by fishpond permits the Republic issued in favor of de Chavez.

In ruling that the subject lots are the same lots litigated in the previously decided cases, the courts below based their findings on *De los Angeles* that in turn was guided by our rulings in *Dizon* and *Ayala y Cia*. For emphasis, we reiterate our ruling in *De los Angeles*: **all areas the Ayalas and/or the Zobels made to appear to be covered by TCT No. 722 are owned by the Republic because they form part of the public domain; specifically, portions of the navigable water or of the foreshores of the bay converted into fishponds are parts of the public domain that cannot be sold by the Ayalas and/or the Zobels to third parties**.

In his answer before the MTC, Chavez asserted that the areas covered by the fishpond permits of Zoila de Chavez are the same parcels of land that he now occupies as Zoila's successor-in-interest. Given the rulings in the antecedent cases that Chavez invoked, Hacienda Bigaa never bothered to object to or to rebut this allegation to show that the presently disputed lots are not

[43] *See Miranda v. Court of Appeals*, 225 Phil. 261, 265-266 (1986).

part of the expanded areas that, apart from the specifically described titles, *Ayala y Cia* described as "other subdivision titles" covering unregisterable lands of the public domain that must revert to the Republic.[44] **Hacienda Bigaa should have objected as we held in *De los Angeles* that the onus is on Ayala and the Zobels — Hacienda Bigaa's predecessors-in-interest — to show that their titles do not cover the expanded areas whose titles were declared null and void**.[45] We find no cogent reason to depart from our past rulings in the antecedent cases, and from the ruling of the courts below in this case that the lots claimed by Hacienda Bigaa are the same lots covered by our rulings in the antecedent cases.

c. Identity of Issues

This case and the antecedent cases all involve the issue of **ownership or better right of possession**. In *Ayala y Cia*, we affirmed an RTC decision that decreed:

> WHEREFORE, judgment is hereby rendered as follows:
>
> (a) Declaring as null and void Transfer Certificate of Title No. T-9550 (or Exhibit "24") of the Register of Deeds of the Province of Batangas and ***other subdivision titles*** *issued in favor of Ayala y Cia and;or Hacienda de Calatagan over the areas outside* its private land covered by TCT No. 722, which, including the lots in T-9550 (lots 360, 362, 363 and 182) are hereby *reverted to public dominion*.[46] (Emphasis supplied, italics in the original.)

Consequently, lots and their titles derived from the Ayala's and the Zobels' TCT No. 722 not shown to be within the original coverage of this title are conclusively public domain areas and their titles will be struck down as nullities.

Thus, *De los Angeles*[47] effectively annulled the subdivision titles disputed in the case for being among the "other subdivision

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[44] See *Republic v. De los Angeles*, *supra* note 10, at 284.

[45] *Id.* at 301-302.

[46] *Republic v. Ayala y Cia*, *supra* note 8, quoted in *Republic v. De los Angeles*, *supra* note 10, at 284.

[47] *Supra* note 10.

titles" declared void for covering public domain areas, and ordered their reversion to the Republic. *De los Angeles* recognized, too, the **right of the Republic's lessees and public fishpond permittees (among them Zoila de Chavez, mother and predecessor-in-interest of Chavez) to possess the fishpond lots in question because they derive their right of possession from the Republic — the rightful owner of these lots.**

We reject, based on these discussions, Hacienda Bigaa's position that there could be no *res judicata* in this case because the present suit is for forcible entry while the antecedent cases adverted were based on different causes of action — *i.e.*, quieting of title, annulment of titles and *accion reinvindicatoria*. For, *res judicata*, under the concept of conclusiveness of judgment, operates even if no absolute identity of causes of action exists. *Res judicata*, in its conclusiveness of judgment concept, merely requires identity of issues. We thus agree with the uniform view of the lower courts — the MTC, RTC and the CA — on the application of *res judicata* to the present case.

Hacienda Bigaa's Titles Carry No Probative Value

Hacienda Bigaa contends that the rulings in the antecedent cases on the nullity of its subdivision titles should not apply to the present case because the titles — TCT Nos. 44695 and 56120 — have not been specifically declared void by court order and must be given probative value. It likewise posits that Chavez failed to introduce evidence before the MTC that the land subject matter of the suit is the same land covered by the decision of the Supreme Court in the antecedent cases.

We reject this contention in light of our holding in the *Ayala y Cia* and *De los Angeles* cases that apart from those expressly litigated and annulled, all "other subdivision titles" over the excess areas of Hacienda Calatagan must be nullified for covering unregisterable lands of the public domain that must revert to the Republic.[48] **To reiterate, lots and their titles derived from**

[48] *Supra* note 44.

the Ayala's and the Zobels' TCT No. 722 not shown to be within the original coverage of this title are conclusively public domain areas and their titles will be struck down as nullities. What could have saved Hacienda Bigaa, as successor-in-interest of the Ayalas and the Zobels, is competent evidence that the subdivision titles in its possession do not fall within the excess areas of TCT No. 722 that are null and void because they are lands of the public domain. **Hacienda Bigaa however failed to discharge this burden**.

Therefore, the Court of Appeals, citing *Ayala y Cia* and *De los Angeles*, correctly held that —

x x x [S]uffice it to state that as heretofore shown, the Supreme Court took cognizance of the fact that Zoila de Chavez's fishpond permit is **within the land covered by the cited decision**. Moreover, the Supreme Court has shifted the burden of proof in this regard to Zobel or Ayala *y* Cia when it declared that, **"Clearly, the burden of proof lies on respondent Zobel and other transferees to show that his subdivision titles are not among the unlawful expanded subdivision titles declared null and void by the said 1965 judgment."**[49] (Emphasis supplied.)

In any event, Hacienda Bigaa can never have a better right of possession over the subject lots above that of the Republic because the lots pertain to the public domain. All lands of the public domain are owned by the State — the Republic. Thus, all attributes of ownership, including the right to possess and use these lands, accrue to the Republic. Granting Hacienda Bigaa the right to possess the subject premises would be equivalent to "condoning an illegal act" by allowing it to perpetuate an "affront and an offense against the State" — *i.e.*, occupying and claiming as its own lands of public dominion that are not susceptible of private ownership and appropriation.[50] Hacienda Bigaa — like its predecessors-in-interests, the Ayalas and the Zobels — is a mere usurper in these public lands. The registration

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[49] Decision of the Court of Appeals, May 31, 2001, *supra* note 2, at 127-128, citing *Republic v. De los Angeles*, *supra* note 10.

[50] *Republic v. De los Angeles*, *supra* note 10, at 297.

in Hacienda Bigaa's name of the disputed lots does not give it a better right than what it had prior to the registration;[51] the issuance of the titles in its favor does not redeem it from the status of a usurper. We so held in *Ayala y Cia* and we reiterated this elementary principle of law in *De los Angeles*.[52] The registration of lands of the public domain under the Torrens system, by itself, cannot convert public lands into private lands.[53]

As our last word, we find it particularly relevant to state here that we issued on October 6, 2008 a Resolution in relation with the execution of our decision in the antecedent cases of *Ayala y Cia* and *De los Angeles*.[54] In this Resolution, we emphasized that the decision we consistently affirmed ordered the following: ***(1) the nullification of all subdivision titles that were issued in favor of Ayala y Cia and/or Hacienda Calatagan (and their successors-in-interest) over the areas outside its private land covered by TCT No. 722; and (2) the declaration that all lands or areas covered by these nullified titles are reverted to the public domain.*** This should write *finis* to Hacienda Bigaa's claim that its titles are beyond the reach of our decision in the antecedent cases.

In sum, we find no reversible errors of law in the appealed decision of the Court of Appeals.

WHEREFORE, we *DENY* the present petition and *AFFIRM* the Court of Appeals' decision of May 31, 2001 and resolution of August 2, 2006. We accordingly *DISMISS WITH FINALITY* the complaint for forcible entry in Civil Case No. 129 before the Municipal Trial Court of Calatagan.

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[51] *Avila v. Tapucar*, G.R. Nos. 93832 and L-45947, August 27, 1991, 201 SCRA 148.

[52] *Republic v. Ayala y Cia*, *supra* note 8, at 263, citing *Dizon v. Bayona*, 98 Phil. 942, 948-949 (1956) and *Dizon v. Rodriguez*, *supra* note 7.

[53] *Ibid.*

[54] G.R. Nos. L-26612 and L-30240, Resolution dated October 6, 2008, 567 SCRA 722.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Abad, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179470. April 20, 2010]

NISSAN NORTH EDSA operating under the name MOTOR CARRIAGE, INC., *petitioner, vs.* **UNITED PHILIPPINE SCOUT VETERANS DETECTIVE AND PROTECTIVE AGENCY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; APPLIES ONLY WHEN THE CONTENTS OF A DOCUMENT ARE THE SUBJECT OF THE INQUIRY.— Nissan's reliance on the best evidence rule is misplaced. The best evidence rule is the rule which requires the highest grade of evidence to prove a disputed fact. However, the same applies only when the contents of a document are the subject of the inquiry. In this case, the contents of the service contract between Nissan and United have not been put in issue. Neither United nor Nissan disputes the contents of the service contract; as in fact, both parties quoted and relied on the same provision of the contract (paragraph 17) to support their respective claims and defenses. Thus, the best evidence rule finds no application here.

2. CIVIL LAW; CIVIL CODE; DAMAGES; PETITIONER'S ACT OF UNILATERALLY TERMINATING THE CONTRACT WITHOUT SPECIFICALLY INDICATING THE PROVISIONS IN THE SERVICE CONTRACT WHICH WERE VIOLATED CONSTITUTES A BREACH THEREOF ENTITLING RESPONDENT TO COLLECT ACTUAL

DAMAGES.— The real issue in this case is whether or not Nissan committed a breach of contract, thereby entitling United to damages in the amount equivalent to 30 days' service. We rule in the affirmative. At the heart of the controversy is paragraph 17 of the service contract, which reads: However, violations committed by either party on the provisions of this Contract shall be sufficient ground for the termination of this contract, without the necessity of prior notice, otherwise a thirty (30) days prior written notice shall be observed. Nissan argues that the failure of United's security guards to report for duty on two occasions, without justifiable cause, constitutes a violation of the provisions of the service contract, sufficient to entitle Nissan to terminate the same without the necessity of a 30-day prior notice. We hold otherwise. As the Metropolitan Trial Court of Las Piñas City stated in its decision, Nissan did not adduce any evidence to substantiate its claim that the terms of the contract were violated by United. What Nissan failed to do is to point out or **indicate the specific provisions** of the service contract which were violated by United as a result of the latter's lapses in security. In so failing, Nissan's act of unilaterally terminating the contract constitutes a breach thereof, entitling United to collect actual damages.

APPEARANCES OF COUNSEL

Felipe Antonio B. Remollo & Elmar Jay Martin I. Dejaresco for petitioner.

Cayton Manzano Peñalosa & Morante for respondent.

D E C I S I O N

PEREZ, *J.*:

The Case

Before us is a petition for review under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 80580. The challenged decision affirmed with

[1] Penned by Associate Justice Lucenito N. Tagle with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. Del Castillo (now an Associate Justice of this Court), concurring. *Rollo,* p. 39.

modification the Decision[2] of the Regional Trial Court, Branch 200, Las Piñas City, in Civil Case No. LP-02-0265 which, in turn, affirmed the Decision[3] of the Metropolitan Trial Court, Branch 79, Las Piñas City, in Civil Case No. 4542.

The Facts

Respondent United Philippine Scout Veterans Detective and Protective Agency (United) is a domestic corporation engaged in the business of providing security services.[4] In 1993, it entered into a contract for security services with petitioner[5] Nissan North Edsa (Nissan), and beginning 23 April 1993, it was able to post 18 security guards within Nissan's compound located in EDSA Balintawak, Quezon City.[6]

In the morning of 31 January 1996, Nissan informed United, through the latter's General Manager, Mr. Ricarte Galope (Galope), that its services were being terminated beginning 5:00 p.m. of that day.[7] Galope personally pleaded with the personnel manager of Nissan to reconsider its decision.[8] When Nissan failed to act on this verbal request, Galope wrote a Letter[9] dated 5 February 1996, addressed to Nissan's general manager, formally seeking a reconsideration of its action. As this was likewise ignored, United's President and Chairman of the Board wrote a Letter[10] dated 27 February 1996, addressed to Nissan's President and General Manager, demanding payment of the amount equivalent to thirty (30) days of service in view of Nissan's act of terminating United's services without observing the required 30-day prior

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[2] Penned by Judge Leopoldo E. Baraquia. *Id.* at 89.

[3] Penned by Judge Pio M. Pasia. *Id.* at 56.

[4] *Id.* at 1.

[5] *Id.* at 16.

[6] *Id.* at 1.

[7] *Id.* at 2.

[8] *Id.*

[9] *Id.* at 108.

[10] *Id.* at 109.

written notice as stipulated under paragraph 17 of their service contract.

As a result of Nissan's continued failure to comply with United's demands, the latter filed a case for Sum of Money with damages before the Metropolitan Trial Court of Las Piñas City.

In its Answer, Nissan maintained that the above-mentioned paragraph 17 of the service contract expressly confers upon either party the power to terminate the contract, without the necessity of a prior written notice, in cases of violations of the provisions thereof.[11] Nissan alleged that United violated the terms of their contract, thereby allowing Nissan to unilaterally terminate the services of United without prior notice.[12]

It appears that on 3 November 1995, United's night supervisor and night security guard did not report for duty.[13] This incident was the subject of a Memorandum issued by Nissan's security officer to United's officer-in-charge stationed at its security detachment.[14] Then, on 16 January 1996, at noontime, the security supervisor assigned at Nissan's premises abandoned his post.[15] Although the general manager of United directed the immediate replacement of its security supervisor,[16] Nissan nevertheless claimed that its premises had been exposed to threats in security, which allegedly constitutes a clear violation of the provisions of the service contract.[17]

On 6 April 2001, Nissan's counsel withdrew his appearance in the case with Nissan's conformity. Despite the directive of the trial court for Nissan to hire another lawyer, no new counsel was engaged by it. Accordingly, the case was submitted for

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[11] *Id.* at 22.

[12] *Id.*

[13] *Id.* at 23.

[14] *Id.*

[15] *Id.* at 22.

[16] *Id.* at 57.

[17] *Id.* at 22.

decision on the basis of the evidence adduced by respondent United.[18]

The Ruling of the Metropolitan Trial Court

In its Decision dated 31 July 2002, the Metropolitan Trial Court ruled in favor of herein respondent United. The trial court pronounced that Nissan has not adduced any evidence to substantiate its claim that the terms of their contract were violated by United; and that absent any showing that violations were committed, the 30-day prior written notice should have been observed.[19]

It thus rendered judgment as follows:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered ordering the defendant to pay the plaintiff as follows:

1. The sum of ₱108,651.00 plus legal interest from February 1, 1996 until fully paid as actual damages;
2. The sum of ₱20,000.000 as exemplary damages;
3. The sum of ₱30,000.00 as attorney's fees and other litigation expenses; and
4. Costs of suit.[20]

Nissan appealed to the Regional Trial Court, questioning the award of actual and exemplary damages, as well as the directive to pay attorney's fees and litigation expenses. It alleged that there was no evidence to support the award of actual damages, as the service contract, upon which the amount of the award was based, was never presented nor offered as evidence in the trial.[21] Furthermore, no evidence was adduced to show bad faith on the part of Nissan in unilaterally terminating the contract, making the award of exemplary damages improper.[22]

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[18] *Id.* at 42.

[19] *Id.* at 59.

[20] *Id.*

[21] *Id.* at 64.

[22] *Id.* at 71.

The Ruling of the Regional Trial Court

In its Decision dated 10 June 2003, the Regional Trial Court declared the appeal without merit as "there appears no cogent reason to reverse the findings and rulings of the lower court."[23] It denied the appeal and affirmed the decision of the Metropolitan Trial Court.

Nissan filed a motion for reconsideration of the decision of the Regional Trial Court but the same was denied in an Order[24] dated 15 October 2003.

Nissan further went on an appeal to the Court of Appeals, citing the same assignment of errors it presented before the Regional Trial Court.

The Ruling of the Court of Appeals

The 14 February 2007 Decision of the Court of Appeals affirmed the Decision dated 10 June 2003 and the 15 October 2003 Order of the Regional Trial Court, with the modification that the award for exemplary damages was deleted. The Court of Appeals held that the breach of contract was not done by Nissan in a wanton, fraudulent, reckless, oppressive or malevolent manner.[25]

Nissan sought reconsideration of the decision affirming the judgment of the lower court but the Court of Appeals denied the same in a Resolution[26] promulgated on 24 August 2007.

Hence, this petition.

The Issue

Petitioner Nissan insists that no judgment can properly be rendered against it, as respondent United failed, during the trial of the case, to offer in evidence the service contract upon which

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[23] *Id.* at 91.

[24] *Id.* at 102.

[25] *Id.* at 51.

[26] *Id.* at 53.

it based its claim for sum of money and damages. As a result, the decisions of the lower courts were mere postulations.[27] Nissan asserts that the resolution of this case calls for the application of the best evidence rule.[28]

The Ruling of the Court

The petition is without merit. We thus sustain the ruling of the Court of Appeals.

Nissan's reliance on the best evidence rule is misplaced. The best evidence rule is the rule which requires the highest grade of evidence to prove a disputed fact.[29] However, the same applies only when the contents of a document are the subject of the inquiry.[30] In this case, the contents of the service contract between Nissan and United have not been put in issue. Neither United nor Nissan disputes the contents of the service contract; as in fact, both parties quoted and relied on the same provision of the contract (paragraph 17) to support their respective claims and defenses. Thus, the best evidence rule finds no application here.

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[27] *Id.* at 20.

[28] Section 3, Rule 130 of the Rules of Court, which provides:

Section 3. *Original document must be produced; exceptions* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of the public officer or is recorded in a public office.

[29] *Gaw v. Chua*, G.R. No. 160855, 16 April 2008, 551 SCRA 505, 521-522.

[30] *Rollo,* p. 42.

The real issue in this case is whether or not Nissan committed a breach of contract, thereby entitling United to damages in the amount equivalent to 30 days' service.

We rule in the affirmative.

At the heart of the controversy is paragraph 17 of the service contract, which reads:

> However, violations committed by either party on the provisions of this Contract shall be sufficient ground for the termination of this contract, without the necessity of prior notice, otherwise a thirty (30) days prior written notice shall be observed.[31]

Nissan argues that the failure of United's security guards to report for duty on two occasions, without justifiable cause, constitutes a violation of the provisions of the service contract, sufficient to entitle Nissan to terminate the same without the necessity of a 30-day prior notice.

We hold otherwise.

As the Metropolitan Trial Court of Las Piñas City stated in its decision, Nissan did not adduce any evidence to substantiate its claim that the terms of the contract were violated by United.

What Nissan failed to do is to point out or **indicate the specific provisions** of the service contract which were violated by United as a result of the latter's lapses in security. In so failing, Nissan's act of unilaterally terminating the contract constitutes a breach thereof, entitling United to collect actual damages.

WHEREFORE, the Decision dated 14 February 2007 and the Resolution dated 24 August 2007 of the Court of Appeals in CA-G.R. SP No. 80580 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Corona,[*] *Brion,* and *Abad, JJ.,* concur.

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[31] *Id.* at 42.

[*] Designated as additional member in lieu of Associate Justice Mariano C. del Castillo per raffle dated April 14, 2010.

SECOND DIVISION

[G.R. No. 182835. April 20, 2010]

RUSTAN ANG *y* PASCUA, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS and IRISH SAGUD,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; R.A. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND CHILDREN ACT); VIOLENCE AGAINST WOMEN INCLUDES AN ACT OR ACTS OF A PERSON AGAINST A WOMAN WITH WHOM HE HAS OR HAD A DATING RELATIONSHIP.— Section 3(a) of R.A. 9262 provides that violence against women includes an act or acts of a person against a woman with whom he has or had a sexual or dating relationship. Thus: **SEC. 3. Definition of Terms. — As used in this Act, (a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. x x x**

2. ID.; ID.; SECTION 5 THEREOF IDENTIFIES THE ACT OR ACTS THAT CONSTITUTE VIOLENCE AGAINST WOMEN AND THESE INCLUDE ANY FORM OF HARASSMENT THAT CAUSES SUBSTANTIAL EMOTIONAL OR PSYCHOLOGICAL DISTRESS TO A WOMAN; ELEMENTS OF THE CRIME OF VIOLENCE AGAINST WOMEN THROUGH HARASSMENT.— Section 5 identifies the act or acts that constitute violence against women and these include any form of harassment that causes substantial emotional or psychological distress to a woman. Thus: **SEC. 5. *Acts of Violence Against Women and Their Children*. — The crime of violence against women and their children is committed through any of the following acts: x x x h. Engaging in**

purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts: x x x 5. Engaging in any form of harassment or violence; The above provisions, taken together, indicate that the elements of the crime of violence against women through harassment are: 1. The offender has or had a sexual or dating relationship with the offended woman; 2. The offender, by himself or through another, commits an act or series of acts of harassment against the woman; and 3. The harassment alarms or causes substantial emotional or psychological distress to her.

3. ID.; ID.; "DATING RELATIONSHIP," DEFINED.— The parties to this case agree that the prosecution needed to prove that accused Rustan had a "dating relationship" with Irish. Section 3(e) provides that a "dating relationship" includes a situation where the parties are romantically involved over time and on a continuing basis during the course of the relationship. Thus: **(e) "Dating relationship" refers to a situation wherein the parties live as husband and wife without the benefit of marriage or <u>are romantically involved over time and on a continuing basis during the course of the relationship</u>. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship.** Here, Rustan claims that, being "romantically involved," implies that the offender and the offended woman have or had sexual relations. According to him, "romance" implies a sexual act. He cites Webster's Comprehensive Dictionary Encyclopedia Edition which provides a colloquial or informal meaning to the word "romance" used as a verb, *i.e.*, "to make love; to make love to" as in "He romanced her." But it seems clear that the law did not use in its provisions the colloquial <u>verb</u> "romance" that implies a sexual act. It did not say that the offender must have "romanced" the offended woman. Rather, it used the noun "romance" to describe a couple's relationship, *i.e.*, "a love affair."

4. ID.; ID.; THE DATING RELATIONSHIP THAT THE LAW CONTEMPLATES CAN EXIST EVEN WITHOUT A SEXUAL INTERCOURSE TAKING PLACE BETWEEN THOSE INVOLVED.— R.A. 9262 provides in Section 3 that "violence against women x x x refers to any act or a series of acts committed

by any person against a woman x x x with whom the person has or had a **sexual or dating** relationship." Clearly, the law itself distinguishes a sexual relationship from a dating relationship. Indeed, Section 3(e) above defines "dating relationship" while Section 3(f) defines "sexual relations." The latter "refers to a single sexual act which may or may not result in the bearing of a common child." The dating relationship that the law contemplates can, therefore, exist even without a sexual intercourse taking place between those involved.

5. ID.; ID.; A FIGHT-AND-KISS THING BETWEEN TWO LOVERS IS A NORMAL OCCURRENCE AND THEIR TAKING PLACE DOES NOT MEAN THAT THE ROMANTIC RELATION BETWEEN THE TWO SHOULD BE DEEMED BROKEN UP DURING PERIODS OF MISUNDERSTANDING.— Rustan also claims that since the relationship between Irish and him was of the "on-and-off" variety (*away-bati*), their romance cannot be regarded as having developed "over time and on a continuing basis." But the two of them were romantically involved, as Rustan himself admits, from October to December of 2003. That would be time enough for nurturing a relationship of mutual trust and love. An "*away-bati*" or a fight-and-kiss thing between two lovers is a common occurrence. Their taking place does not mean that the romantic relation between the two should be deemed broken up during periods of misunderstanding. Explaining what "*away-bati*" meant, Irish explained that at times, when she could not reply to Rustan's messages, he would get angry at her. That was all. Indeed, she characterized their three-month romantic relation as continuous.

6. ID.; ID.; A SINGLE ACT OF HARASSMENT, WHICH TRANSLATE INTO VIOLENCE WOULD BE ENOUGH; THE OBJECT OF THE LAW IS TO PROTECT WOMEN AND CHILDREN AND PUNISHING ONLY VIOLENCE THAT IS REPEATEDLY COMMITTED WOULD LICENSE ISOLATED ONES.— Rustan argues that the one act of sending an offensive picture should not be considered a form of harassment. He claims that such would unduly ruin him personally and set a very dangerous precedent. But Section 3(a) of R.A. 9262 punishes "any act or series of acts" that constitutes violence against women. This means that a single act of harassment, which translates into violence, would be

enough. The object of the law is to protect women and children. Punishing only violence that is repeatedly committed would license isolated ones.

7. ID.; ID.; THE NAKED WOMAN ON THE PICTURE, HER LEGS SPREAD OPEN AND BEARING RESPONDENT'S HEAD AND FACE, WAS CLEARLY OBSCENE AND TO RESPONDENT A REVOLTING AND OFFENSIVE ONE; THE ACT CAUSED NOT ONLY IMMEASURABLE TRAUMA BUT ALSO A NIGHTMARE DUE TO THE THREAT BY PETITIONER TO POST IT ON THE INTERNET FOR ALL TO SEE.— The Court cannot measure the trauma that Irish experienced based on Rustan's low regard for the alleged moral sensibilities of today's youth. What is obscene and injurious to an offended woman can of course only be determined based on the circumstances of each case. Here, the naked woman on the picture, her legs spread open and bearing Irish's head and face, was clearly an obscene picture and, to Irish a revolting and offensive one. Surely, any woman like Irish, who is not in the pornography trade, would be scandalized and pained if she sees herself in such a picture. What makes it further terrifying is that, as Irish testified, Rustan sent the picture with a threat to post it in the internet for all to see. That must have given her a nightmare.

8. ID.; ID.; AUTHORSHIP BY PETITIONER OF THE OFFENSIVE ACT PROVEN DESPITE NON-PRESENTATION OF THE CELL PHONE AND SIM CARDS THAT THE POLICE SEIZED FROM HIM AT THE TIME OF THE ARREST.— Rustan argues that, since he was arrested and certain items were seized from him without any warrant, the evidence presented against him should be deemed inadmissible. But the fact is that the prosecution did not present in evidence either the cellphone or the SIM cards that the police officers seized from him at the time of his arrest. The prosecution did not need such items to prove its case. Exhibit C for the prosecution was but a photograph depicting the Sony Ericsson P900 cellphone that was used, which cellphone Rustan admitted owning during the pre-trial conference. Actually, though, the bulk of the evidence against him consisted in Irish's testimony that she received the obscene picture and malicious text messages that the sender's cellphone numbers belonged

to Rustan with whom she had been previously in communication. Indeed, to prove that the cellphone numbers belonged to Rustan, Irish and the police used such numbers to summon him to come to Lorentess Resort and he did. Consequently, the prosecution did not have to present the confiscated cellphone and SIM cards to prove that Rustan sent those messages. Moreover, Rustan admitted having sent the malicious text messages to Irish. His defense was that he himself received those messages from an unidentified person who was harassing Irish and he merely forwarded the same to her, using his cellphone. But Rustan never presented the cellphone number of the unidentified person who sent the messages to him to authenticate the same. The RTC did not give credence to such version and neither will this Court. Besides, it was most unlikely for Irish to pin the things on Rustan if he had merely tried to help her identify the sender.

9. REMEDIAL LAW; EVIDENCE; RULES ON ELECTRONIC EVIDENCE; APPLIES ONLY TO CIVIL ACTIONS, QUASI-JUDICIAL PROCEEDINGS AND ADMINISTRATIVE PROCEEDINGS.— Rustan claims that the obscene picture sent to Irish through a text message constitutes an electronic document. Thus, it should be authenticated by means of an electronic signature, as provided under Section 1, Rule 5 of the Rules on Electronic Evidence (A.M. 01-7-01-SC). But, firstly, Rustan is raising this objection to the admissibility of the obscene picture, Exhibit A, for the first time before this Court. The objection is too late since he should have objected to the admission of the picture on such ground at the time it was offered in evidence. He should be deemed to have already waived such ground for objection. Besides, the rules he cites do not apply to the present criminal action. The Rules on Electronic Evidence applies only to civil actions, quasi-judicial proceedings, and administrative proceedings. In conclusion, this Court finds that the prosecution has proved each and every element of the crime charged beyond reasonable doubt.

APPEARANCES OF COUNSEL

Padilla Padolina Padilla Ignacio & Associates Law Offices for petitioner.

D E C I S I O N

ABAD, *J.*:

This case concerns a claim of commission of the crime of violence against women when a former boyfriend sent to the girl the picture of a naked woman, not her, but with her face on it.

The Indictment

The public prosecutor charged petitioner-accused Rustan Ang (Rustan) before the Regional Trial Court (RTC) of Baler, Aurora, of violation of the Anti-Violence Against Women and Their Children Act or Republic Act (R.A.) 9262 in an information that reads:

That on or about June 5, 2005, in the Municipality of Maria Aurora, Province of Aurora, Philippines and within the jurisdiction of this Honorable Court, the said accused willfully, unlawfully and feloniously, in a purposeful and reckless conduct, sent through the Short Messaging Service (SMS) using his mobile phone, a pornographic picture to one Irish Sagud, who was his former girlfriend, whereby the face of the latter was attached to a completely naked body of another woman making it to appear that it was said Irish Sagud who is depicted in the said obscene and pornographic picture thereby causing substantial emotional anguish, psychological distress and humiliation to the said Irish Sagud.[1]

The Facts and the Case

The evidence for the prosecution shows that complainant Irish Sagud (Irish) and accused Rustan were classmates at Wesleyan University in Aurora Province. Rustan courted Irish and they became "on-and-off" sweethearts towards the end of 2004. When Irish learned afterwards that Rustan had taken a live-in partner (now his wife), whom he had gotten pregnant, Irish broke up with him.

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[1] Docketed as Criminal Case 3493.

Before Rustan got married, however, he got in touch with Irish and tried to convince her to elope with him, saying that he did not love the woman he was about to marry. Irish rejected the proposal and told Rustan to take on his responsibility to the other woman and their child. Irish changed her cellphone number but Rustan somehow managed to get hold of it and sent her text messages. Rustan used two cellphone numbers for sending his messages, namely, 0920-4769301 and 0921-8084768. Irish replied to his text messages but it was to ask him to leave her alone.

In the early morning of June 5, 2005, Irish received through multimedia message service (MMS) a picture of a naked woman with spread legs and with Irish's face superimposed on the figure (Exhibit A).[2] The sender's cellphone number, stated in the message, was 0921-8084768, one of the numbers that Rustan used. Irish surmised that he copied the picture of her face from a shot he took when they were in Baguio in 2003 (Exhibit B).[3]

After she got the obscene picture, Irish got other text messages from Rustan. He boasted that it would be easy for him to create similarly scandalous pictures of her. And he threatened to spread the picture he sent through the internet. One of the messages he sent to Irish, written in text messaging shorthand, read: "*Madali lang ikalat yun, my chatrum ang tarlac rayt pwede ring send sa lahat ng chatter*."[4]

Irish sought the help of the vice mayor of Maria Aurora who referred her to the police. Under police supervision, Irish contacted Rustan through the cellphone numbers he used in sending the picture and his text messages. Irish asked Rustan to meet her at the Lorentess Resort in Brgy. Ramada, Maria Aurora, and he did. He came in a motorcycle. After parking

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[2] Records, p. 69.

[3] *Id.* at 70.

[4] Exhibit D and sub-markings, *id.* at 72-76.

it, he walked towards Irish but the waiting police officers intercepted and arrested him. They searched him and seized his Sony Ericsson P900 cellphone and several SIM cards. While Rustan was being questioned at the police station, he shouted at Irish: "*Malandi ka kasi!*"

Joseph Gonzales, an instructor at the Aurora State College of Technology, testified as an expert in information technology and computer graphics. He said that it was very much possible for one to lift the face of a woman from a picture and superimpose it on the body of another woman in another picture. Pictures can be manipulated and enhanced by computer to make it appear that the face and the body belonged to just one person.

Gonzales testified that the picture in question (Exhibit A) had two distinct irregularities: the face was not proportionate to the body and the face had a lighter color. In his opinion, the picture was fake and the face on it had been copied from the picture of Irish in Exhibit B. Finally, Gonzales explained how this could be done, transferring a picture from a computer to a cellphone like the Sony Ericsson P900 seized from Rustan.

For his part, Rustan admitted having courted Irish. He began visiting her in Tarlac in October 2003 and their relation lasted until December of that year. He claimed that after their relation ended, Irish wanted reconciliation. They met in December 2004 but, after he told her that his girlfriend at that time (later his wife) was already pregnant, Irish walked out on him.

Sometime later, Rustan got a text message from Irish, asking him to meet her at Lorentess Resort as she needed his help in selling her cellphone. When he arrived at the place, two police officers approached him, seized his cellphone and the contents of his pockets, and brought him to the police station.

Rustan further claims that he also went to Lorentess because Irish asked him to help her identify a prankster who was sending her malicious text messages. Rustan got the sender's number and, pretending to be Irish, contacted the person. Rustan claims that he got back obscene messages from the prankster, which

he forwarded to Irish from his cellphone. This explained, he said, why the obscene messages appeared to have originated from his cellphone number. Rustan claims that it was Irish herself who sent the obscene picture (Exhibit A) to him. He presented six pictures of a woman whom he identified as Irish (Exhibits 2 to 7).[5]

Michelle Ang (Michelle), Rustan's wife, testified that she was sure Irish sent the six pictures. Michelle claims that she received the pictures and hid the memory card (Exhibit 8) that contained them because she was jealous and angry. She did not want to see anything of Irish. But, while the woman in the pictures posed in sexy clothing, in none did she appear naked as in Exhibit A. Further, the face of the woman in Exhibits 2, 4, 5 and 6 could not be seen. Irish denied that she was the woman in those four pictures. As for Exhibits 3 and 7, the woman in the picture was fully dressed.

After trial, the RTC found Irish's testimony completely credible, given in an honest and spontaneous manner. The RTC observed that she wept while recounting her experience, prompting the court to comment: "Her tears were tangible expression of pain and anguish for the acts of violence she suffered in the hands of her former sweetheart. The crying of the victim during her testimony is evidence of the credibility of her charges with the verity borne out of human nature and experience."[6] Thus, in its Decision dated August 1, 2001, the RTC found Rustan guilty of the violation of Section 5(h) of R.A. 9262.

On Rustan's appeal to the Court of Appeals (CA),[7] the latter rendered a decision dated January 31, 2008,[8] affirming the RTC decision. The CA denied Rustan's motion for reconsideration

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[5] *Id.* at 156-159.

[6] *Rollo*, p. 38.

[7] Docketed as CA-G.R. CR 30567.

[8] Penned by then Associate Justice Mariano C. Del Castillo (now a member of this Court), and concurred in by Associate Justices Arcangelita Romilla-Lontok and Romeo F. Barza.

in a resolution dated April 25, 2008. Thus, Rustan filed the present for review on *certiorari*.

The Issues Presented

The principal issue in this case is whether or not accused Rustan sent Irish by cellphone message the picture with her face pasted on the body of a nude woman, inflicting anguish, psychological distress, and humiliation on her in violation of Section 5(h) of R.A. 9262.

The subordinate issues are:

1. Whether or not a "dating relationship" existed between Rustan and Irish as this term is defined in R.A. 9262;

2. Whether or not a single act of harassment, like the sending of the nude picture in this case, already constitutes a violation of Section 5(h) of R.A. 9262;

3. Whether or not the evidence used to convict Rustan was obtained from him in violation of his constitutional rights; and

4. Whether or not the RTC properly admitted in evidence the obscene picture presented in the case.

The Court's Rulings

Section 3(a) of R.A. 9262 provides that violence against women includes an act or acts of a person against a woman with whom he has or had a sexual or dating relationship. Thus:

SEC. 3. Definition of Terms. — As used in this Act,

(a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

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Section 5 identifies the act or acts that constitute violence against women and these include any form of harassment that causes substantial emotional or psychological distress to a woman. Thus:

SEC. 5. *Acts of Violence Against Women and Their Children*. — The crime of violence against women and their children is committed through any of the following acts:

x x x x x x x x x

h. Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

x x x x x x x x x

5. Engaging in any form of harassment or violence;

The above provisions, taken together, indicate that the elements of the crime of violence against women through harassment are:

1. The offender has or had a sexual or dating relationship with the offended woman;

2. The offender, by himself or through another, commits an act or series of acts of harassment against the woman; and

3. The harassment alarms or causes substantial emotional or psychological distress to her.

One. The parties to this case agree that the prosecution needed to prove that accused Rustan had a "dating relationship" with Irish. Section 3(e) provides that a "dating relationship" includes a situation where the parties are romantically involved over time and on a continuing basis during the course of the relationship. Thus:

(e) "Dating relationship" refers to a situation wherein the parties live as husband and wife without the benefit of marriage or <u>are romantically involved over time and on a continuing</u>

basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship. (Underscoring supplied.)

Here, Rustan claims that, being "romantically involved," implies that the offender and the offended woman have or had sexual relations. According to him, "romance" implies a sexual act. He cites Webster's Comprehensive Dictionary Encyclopedia Edition which provides a colloquial or informal meaning to the word "romance" used as a verb, *i.e.*, "to make love; to make love to" as in "He romanced her."

But it seems clear that the law did not use in its provisions the colloquial verb "romance" that implies a sexual act. It did not say that the offender must have "romanced" the offended woman. Rather, it used the noun "romance" to describe a couple's relationship, *i.e.*, "a love affair."[9]

R.A. 9262 provides in Section 3 that "violence against women x x x refers to any act or a series of acts committed by any person against a woman x x x with whom the person has or had a **sexual or dating** relationship." Clearly, the law itself distinguishes a sexual relationship from a dating relationship. Indeed, Section 3(e) above defines "dating relationship" while Section 3(f) defines "sexual relations." The latter "refers to a single sexual act which may or may not result in the bearing of a common child." The dating relationship that the law contemplates can, therefore, exist even without a sexual intercourse taking place between those involved.

Rustan also claims that since the relationship between Irish and him was of the "on-and-off" variety (*away-bati*), their romance cannot be regarded as having developed "over time and on a continuing basis." But the two of them were romantically involved, as Rustan himself admits, from October to December of 2003. That would be time enough for nurturing a relationship of mutual trust and love.

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[9] Webster's New World College Dictionary, Third Edition, p. 1164.

An "*away-bati*" or a fight-and-kiss thing between two lovers is a common occurrence. Their taking place does not mean that the romantic relation between the two should be deemed broken up during periods of misunderstanding. Explaining what "*away-bati*" meant, Irish explained that at times, when she could not reply to Rustan's messages, he would get angry at her. That was all. Indeed, she characterized their three-month romantic relation as continuous.[10]

Two. Rustan argues that the one act of sending an offensive picture should not be considered a form of harassment. He claims that such would unduly ruin him personally and set a very dangerous precedent. But Section 3(a) of R.A. 9262 punishes "any act or series of acts" that constitutes violence against women. This means that a single act of harassment, which translates into violence, would be enough. The object of the law is to protect women and children. Punishing only violence that is repeatedly committed would license isolated ones.

Rustan alleges that today's women, like Irish, are so used to obscene communications that her getting one could not possibly have produced alarm in her or caused her substantial emotional or psychological distress. He claims having previously exchanged obscene pictures with Irish such that she was already desensitized by them.

But, firstly, the RTC which saw and heard Rustan and his wife give their testimonies was not impressed with their claim that it was Irish who sent the obscene pictures of herself (Exhibits 2-7). It is doubtful if the woman in the picture was Irish since her face did not clearly show on them.

Michelle, Rustan's wife, claimed that she deleted several other pictures that Irish sent, except Exhibits 2 to 7. But her testimony did not make sense. She said that she did not know that Exhibits 2 to 7 had remained saved after she deleted the pictures. Later, however, she said that she did not have time to delete

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[10] TSN, April 11, 2006, pp. 22-24.

them.[11] And, if she thought that she had deleted all the pictures from the memory card, then she had no reason at all to keep and hide such memory card. There would have been nothing to hide. Finally, if she knew that some pictures remained in the card, there was no reason for her to keep it for several years, given that as she said she was too jealous to want to see anything connected to Irish. Thus, the RTC was correct in not giving credence to her testimony.

Secondly, the Court cannot measure the trauma that Irish experienced based on Rustan's low regard for the alleged moral sensibilities of today's youth. What is obscene and injurious to an offended woman can of course only be determined based on the circumstances of each case. Here, the naked woman on the picture, her legs spread open and bearing Irish's head and face, was clearly an obscene picture and, to Irish a revolting and offensive one. Surely, any woman like Irish, who is not in the pornography trade, would be scandalized and pained if she sees herself in such a picture. What makes it further terrifying is that, as Irish testified, Rustan sent the picture with a threat to post it in the internet for all to see. That must have given her a nightmare.

Three. Rustan argues that, since he was arrested and certain items were seized from him without any warrant, the evidence presented against him should be deemed inadmissible. But the fact is that the prosecution did not present in evidence either the cellphone or the SIM cards that the police officers seized from him at the time of his arrest. The prosecution did not need such items to prove its case. Exhibit C for the prosecution was but a photograph depicting the Sony Ericsson P900 cellphone that was used, which cellphone Rustan admitted owning during the pre-trial conference.

Actually, though, the bulk of the evidence against him consisted in Irish's testimony that she received the obscene picture and malicious text messages that the sender's cellphone numbers belonged to Rustan with whom she had been previously in communication. Indeed, to prove that the cellphone numbers

[11] TSN, July 19, 2006, pp. 10-12.

belonged to Rustan, Irish and the police used such numbers to summon him to come to Lorentess Resort and he did.[12] Consequently, the prosecution did not have to present the confiscated cellphone and SIM cards to prove that Rustan sent those messages.

Moreover, Rustan admitted having sent the malicious text messages to Irish.[13] His defense was that he himself received those messages from an unidentified person who was harassing Irish and he merely forwarded the same to her, using his cellphone. But Rustan never presented the cellphone number of the unidentified person who sent the messages to him to authenticate the same. The RTC did not give credence to such version and neither will this Court. Besides, it was most unlikely for Irish to pin the things on Rustan if he had merely tried to help her identify the sender.

Four. Rustan claims that the obscene picture sent to Irish through a text message constitutes an electronic document. Thus, it should be authenticated by means of an electronic signature, as provided under Section 1, Rule 5 of the Rules on Electronic Evidence (A.M. 01-7-01-SC).

But, firstly, Rustan is raising this objection to the admissibility of the obscene picture, Exhibit A, for the first time before this Court. The objection is too late since he should have objected to the admission of the picture on such ground at the time it was offered in evidence. He should be deemed to have already waived such ground for objection.[14]

Besides, the rules he cites do not apply to the present criminal action. The Rules on Electronic Evidence applies only to civil actions, quasi-judicial proceedings, and administrative proceedings.[15]

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[12] TSN, April 11, 2006, p. 28.

[13] TSN, June 27, 2006, pp. 23-24.

[14] *People v. Mendoza*, G.R. No. 180501, December 24, 2008, 575 SCRA 616, 625-626.

[15] A.M. No. 01-7-01-SC, Rule 1, Section 2.

In conclusion, this Court finds that the prosecution has proved each and every element of the crime charged beyond reasonable doubt.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision of the Court of Appeals in CA-G.R. CR 30567 dated January 31, 2008 and its resolution dated April 25, 2008.

SO ORDERED.

Carpio, Velasco, Jr.,[*] *Brion,* and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187742. April 20, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRIZALDO PACHECO *y* VILLANUEVA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS OF THE CRIME; THE ELOQUENT TESTIMONY OF THE VICTIM, COUPLED WITH THE MEDICAL FINDINGS ATTESTING TO HER NON-VIRGIN STATE SHOULD BE ENOUGH TO CONFIRM THE TRUTH OF HER CHARGES.— The Revised Penal Code defines statutory rape as sexual intercourse with a girl below 12 years old. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. *People v. Teodoro* explains that statutory rape departs from the usual modes of committing rape: What the law punishes in statutory

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[*] Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per raffle dated September 14, 2009.

rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. In prosecuting rape cases, we reiterate from previous rulings that the eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges. We find this applicable to the instant case.

2. ID.; ID.; ID.; APPELLANT'S MORAL ASCENDANCY OVER THE VICTIM, COMBINED WITH THE MEMORIES OF PREVIOUS BEATINGS, WAS MORE THAN ENOUGH TO INTIMIDATE HER WHICH RENDERED HER HELPLESS WHILE SHE WAS BEING VICTIMIZED.— There are those charged with the serious crime of rape who try to escape liability by questioning why the alleged rape victim did not struggle against the rapist or at least shout for help. They attempt to shift blame on the victim for failing to manifest resistance to sexual abuse. This Court, however, has repeatedly held that there is no clear-cut behavior that can be expected of one who is being raped or has been raped. In *People v. Ofemiano*, we thus ruled: Jurisprudence holds that the failure of the victim to shout for help does not negate rape. Even the victim's lack of resistance, especially when intimidated by the offender into submission, does not signify voluntariness or consent. In *People v. Corpuz*, we acknowledged that even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. We emphasized that in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy substitutes for violence or intimidation. *Ofemiano* applies to this case. While AAA may not have exerted effort to free herself from her rapist, her actions can be explained by the fear she already had of accused-appellant, who had beat her up on more than one occasion. Accused-appellant's moral ascendancy over AAA, combined with memories of previous beatings, was more than enough to intimidate AAA and rendered her helpless while she was being victimized. Moreover, in *People v. Bagos*, we held that the lack of a struggle or an outcry from the victim is immaterial to the rape of a child below 12 years of age. The law presumes

that such a victim, on account of her tender age, does not and cannot have a will of her own. On this score, accused-appellant's defense is wanting.

3. ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE; THE PRESENCE OF FAMILY MEMBERS IN THE SAME ROOM HAS NOT DISCOURAGED RAPISTS FROM COMMITTING THE CRIME.— Accused-appellant cannot as well count on the much-abused line that rape is not committed when others are present. Sadly, the presence of family members in the same room has not discouraged rapists from preying on children, giving this Court to observe before that "lust is no respecter of time and place." Rape has been shown to have been committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.

4. ID.; ID.; IT IS QUITE INCREDIBLE FOR A YOUNG GIRL TO PUBLICLY AND FALSELY ACCUSE HER STEPFATHER OF RAPE IN RETALIATION FOR A MINOR DISCIPLINARY MEASURE.— Accused-appellant claims that AAA bears a grudge against him. He theorizes that he was wrongfully charged of rape after he spanked AAA and earned her resentment. This Court, however, finds AAA's version more believable. As the trial court noted, she bore a grudge against accused-appellant for raping her repeatedly. Yet this grudge was not the basis of the rape complaint. As the lower court observed, it was natural for AAA to harbor ill feelings against accused-appellant but that factor alone would not affect her credibility. It is quite incredible for a young girl to publicly and falsely accuse her stepfather of rape in retaliation for a minor disciplinary measure. The burden of going through a rape prosecution is grossly out of proportion to whatever revenge the young girl would be able to exact. The Court has justifiably thus ruled, as the OSG noted, that a girl of tender age would not allow herself to go through the humiliation of a public trial if not to pursue justice for what has happened.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM MAY BE THE SOLE BASIS OF CONVICTION.— The healed

lacerations on the victim's hymen do not disprove that accused-appellant raped the victim and cannot serve to acquit him. Proof of hymenal laceration is not even an element of rape, so long as there is enough proof of entry of the male organ into the *labia* of the *pudendum* of the female organ. Moreover, as the appellate court noted, the finding of healed lacerations does not prove that it was AAA's uncle who raped her and not accused-appellant. No corroborating evidence was presented to back up the claim that AAA was raped by someone else. Unfortunately, the argument only suggests that if accused-appellant's defense is to be believed, AAA was raped by two different men. As this Court has previously ruled, accused-appellant can still be convicted of rape on the sole basis of the testimony of the victim. Hence, even if the medical findings are disregarded, in the end, the prosecution has successfully proved the case of rape against accused-appellant on the basis of AAA's testimony.

6. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.— The use by accused-appellant of the defenses of denial and alibi cannot exculpate him from liability as these were not substantiated by clear and convincing evidence. His testimony was negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the November 18, 2008 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02796, which affirmed the Decision in Criminal Case No. 26020-MN of the Regional Trial Court (RTC), Branch 169 in Malabon City. The RTC convicted accused-appellant Crizaldo Pacheco of rape.

The Facts

An Information charged accused-appellant as follows:

That on or about the 7th day of January, 2002, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the step-father of [AAA],[1] with lewd design and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said [AAA], a minor of nine (9) years old against her will and without her consent, which act debases, degrades or demeans the intrinsic worth and dignity of [AAA].[2]

During his arraignment, accused-appellant pleaded "not guilty."

The Prosecution's Version of Facts

At the trial, the prosecution presented the victim, AAA, and Police Senior Inspector (P/SInsp.) Ruby Grace Sabino as witnesses. Likewise presented were: a machine copy of AAA's *Sworn Statement* (Exhibits "A" to "A-3"), original copies of *Official Medico-Legal Report No. 0011-01-08-02* (Exhibit "B"), *Social Case Study Report* (Exhibit "C"), *Joint Affidavit of Arrest* (Exhibit "D"), Photo Documents (Exhibits "F" to "F-5"), and AAA's *Certificate of Live Birth* (Exhibit "G").

AAA lived with her mother, BBB, and accused-appellant, BBB's live-in partner, in Malabon City. She recalled that accused-appellant had raped her many times, the last of which happened on January 7, 2002 at around 2 o'clock in the morning. At that time, she was awakened from her sleep when accused-appellant was removing her clothes. He then removed his clothes also and proceeded to mount her, inserting his penis into her vagina and repeating a pumping movement. AAA felt pain in her vagina but could not cry out as accused-appellant threatened to maul

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[1] Per *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419-420, and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), the real name of the victim and her personal circumstances and other information tending to establish her identity, as well as those of her immediate family or household members, are withheld.

[2] CA *rollo*, p. 51.

and box her as he had previously done. After having carnal knowledge of AAA, accused-appellant then went to sleep.[3]

AAA eventually revealed accused-appellant's lechery to one of her teachers, who accompanied her to *Bantay Bata* ABS-CBN to ask for help. AAA then gave the police a statement of what had happened to her.[4]

P/SInsp. Sabino testified in her capacity as Medico-Legal Officer of the Philippine National Police (PNP) Women's Crime and Child Protection Center. Her ano-genital examination on AAA revealed that the child had deep healed laceration at 6 o'clock position.[5]

The Version of the Defense

The defense offered the sole testimony of accused-appellant. He testified that there were nine of them living in the same house measuring around three by eight meters. On the day of the rape incident, he said AAA had a grudge against him because he spanked her for failing to return home at lunchtime. He also alleged that he once caught his brother-in-law Bernabe Peralta molesting AAA inside the bathroom.

During cross-examination, accused-appellant said that on January 6, 2002, he slept uninterrupted the whole night. He remarked that they were packed like sardines in their small dwelling, with him asleep next to his wife while AAA slept on the extreme opposite side.[6]

The Ruling of the Trial Court

The RTC found accused-appellant guilty beyond reasonable doubt of raping AAA. It viewed AAA's testimony as positive and straightforward and supported by clear corroborative evidence.

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[3] *Rollo,* pp. 4-5.

[4] CA *rollo,* p. 59.

[5] *Rollo,* p. 5.

[6] CA *rollo,* p. 21.

It gave no credence to the argument that accused-appellant could not have raped AAA in the presence of other family members.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, accused CRIZALDO PACHECO *y* VILLANUEVA is hereby found GUILTY beyond reasonable doubt of the crime of RAPE and he is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the offended party in the sum of Fifty Thousand Pesos (Php 50,000.00) as civil indemnity and Fifty Thousand Pesos (Php 50,000.00) as moral damages.
>
> SO ORDERED.[7]

Accused-appellant challenged his conviction before the CA. His appeal centered on certain circumstances that allegedly affected AAA's credibility. Her actions during and after the rape, the defense argued, were inconsistent with that of a rape victim. Moreover, it was claimed that the alleged molestation of AAA at the hands of her uncle created serious doubt as to who the real rapist was.

The Ruling of the Appellate Court

On appeal, accused-appellant faulted the trial court for erroneously ruling against him even if (1) the rape could not have been committed inside a room where AAA's mother and other siblings were also sleeping; (2) AAA belatedly reported the rape; (3) the prosecution failed to establish with certainty that the hymenal laceration was the direct result of his raping AAA; (4) AAA could have shouted or resisted if she was really raped; and (5) AAA was motivated by ill feelings in accusing accused-appellant of rape.

The CA affirmed *in toto* the RTC Decision. It found the testimony of AAA credible and given in a clear and straightforward manner. The appellate court found that her testimony was bolstered by the medical findings on AAA. On the other hand, the CA found accused-appellant's defenses weak and unavailing.

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[7] *Id.* at 24. Penned by Judge Emmanuel D. Laurea.

Hence, we have this appeal.

On August 3, 2009, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested that they were foregoing the submission of supplemental briefs. The issue raised before the appellate court is, therefore, deemed adopted in this appeal.

The Issue

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The Ruling of the Court

The defense maintains that the demeanor of AAA was inconsistent with that of a girl who had been ravaged. She did not do anything to stop accused-appellant from committing the rape. She also did not shout for help or try to get the attention of her mother and other siblings who were sleeping beside her. She likewise did not report the rape to her family or the authorities at once and went back to sleep instead. While the defense acknowledges that people react differently in such a situation, they argue that it is unnatural for AAA to not even make a feeble attempt to free herself or make some kind of noise when she had the opportunity to do so.

Since the brother-in-law of accused-appellant also allegedly raped AAA, the defense points out that there was serious doubt as to who the real offender was.

The prosecution, on the other hand, argues that the healing of AAA's hymenal laceration does not negate the fact that she had been raped.

The Office of the Solicitor General (OSG) relies on the doctrine that positive identification prevails over denials and alibis. It maintains that it is especially difficult to believe that a child of tender years would accuse someone of sexual maltreatment, permit a medical examination of her private parts, and withstand

a public trial if she were not honestly seeking justice. Citing jurisprudence, it counters accused-appellant's argument by saying that the presence of lacerations in the victim's vagina is not necessary in proving rape.

We affirm accused-appellant's conviction.

The arguments raised by the defense are overused and insubstantial. These have been rejected by this Court in the past.

Elements of the Crime of Rape

The Revised Penal Code defines statutory rape as sexual intercourse with a girl below 12 years old. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.[8]

People v. Teodoro[9] explains that statutory rape departs from the usual modes of committing rape:

> What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.

In prosecuting rape cases, we reiterate from previous rulings that the eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.[10] We find this applicable to the instant case.

Demeanor of Rape Victim

There are those charged with the serious crime of rape who try to escape liability by questioning why the alleged rape victim

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[8] *People v. Perez*, G.R. No. 182924, December 24, 2008.

[9] G.R. No. 172372, December 2, 2009.

[10] *People v. Peralta*, G.R. No. 187531, October 16, 2009.

did not struggle against the rapist or at least shout for help. They attempt to shift blame on the victim for failing to manifest resistance to sexual abuse. This Court, however, has repeatedly held that there is no clear-cut behavior that can be expected of one who is being raped or has been raped.

In *People v. Ofemiano*,[11] we thus ruled:

> Jurisprudence holds that the failure of the victim to shout for help does not negate rape. Even the victim's lack of resistance, especially when intimidated by the offender into submission, does not signify voluntariness or consent. In *People v. Corpuz*, we acknowledged that even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. We emphasized that in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy substitutes for violence or intimidation.

Ofemiano applies to this case. While AAA may not have exerted effort to free herself from her rapist, her actions can be explained by the fear she already had of accused-appellant, who had beat her up on more than one occasion. Accused-appellant's moral ascendancy over AAA, combined with memories of previous beatings, was more than enough to intimidate AAA and rendered her helpless while she was being victimized. Moreover, in *People v. Bagos*,[12] we held that the lack of a struggle or an outcry from the victim is immaterial to the rape of a child below 12 years of age. The law presumes that such a victim, on account of her tender age, does not and cannot have a will of her own. On this score, accused-appellant's defense is wanting.

Accused-appellant cannot as well count on the much-abused line that rape is not committed when others are present. Sadly, the presence of family members in the same room has not discouraged rapists from preying on children, giving this Court

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[11] G.R. No. 187155, February 1, 2010.

[12] G.R. No. 177152, January 6, 2010.

to observe before that "lust is no respecter of time and place."[13] Rape has been shown to have been committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[14]

Grudge against Accused-Appellant

Accused-appellant claims that AAA bears a grudge against him. He theorizes that he was wrongfully charged of rape after he spanked AAA and earned her resentment. This Court, however, finds AAA's version more believable. As the trial court noted, she bore a grudge against accused-appellant for raping her repeatedly. Yet this grudge was not the basis of the rape complaint. As the lower court observed, it was natural for AAA to harbor ill feelings against accused-appellant but that factor alone would not affect her credibility. It is quite incredible for a young girl to publicly and falsely accuse her stepfather of rape in retaliation for a minor disciplinary measure. The burden of going through a rape prosecution is grossly out of proportion to whatever revenge the young girl would be able to exact. The Court has justifiably thus ruled, as the OSG noted, that a girl of tender age would not allow herself to go through the humiliation of a public trial if not to pursue justice for what has happened.[15]

Alleged Commission of Rape by Victim's Uncle

The healed lacerations on the victim's hymen do not disprove that accused-appellant raped the victim and cannot serve to acquit him. Proof of hymenal laceration is not even an element of rape, so long as there is enough proof of entry of the male

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[13] *People v. Bernabe*, G.R. No.141881, November 21, 2001, 370 SCRA 142, 147.

[14] *People v. Cabral*, G.R. No. 179946, December 23, 2009; citing *People v. Cura*, G.R. No. 112529, January 18, 1995, 240 SCRA 234, 242.

[15] *People v. Achas*, G.R. No. 185712, August 4, 2009; citing *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 41.

organ into the *labia* of the *pudendum* of the female organ.[16] Moreover, as the appellate court noted, the finding of healed lacerations does not prove that it was AAA's uncle who raped her and not accused-appellant. No corroborating evidence was presented to back up the claim that AAA was raped by someone else. Unfortunately, the argument only suggests that if accused-appellant's defense is to be believed, AAA was raped by two different men.

As this Court has previously ruled, accused-appellant can still be convicted of rape on the sole basis of the testimony of the victim. Hence, even if the medical findings are disregarded, in the end, the prosecution has successfully proved the case of rape against accused-appellant on the basis of AAA's testimony.[17]

The use by accused-appellant of the defenses of denial and alibi cannot exculpate him from liability as these were not substantiated by clear and convincing evidence. His testimony was negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters.[18]

We find no reason to reverse the factual findings of the lower court, especially since the CA affirmed such findings. It was in the best position to weigh the evidence presented during trial and ascertain the credibility of the witnesses who testified. There is no showing that the lower court overlooked, misunderstood, or misapplied facts or circumstances of weight which would have affected the outcome of the case.[19]

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[16] *People v. Cruz*, G.R. No. 186129, August 4, 2009; citing *People v. Jumawid*, G.R. No. 184756, June 5, 2009.

[17] *People v. Escoton*, G.R. No. 183577, February 1, 2010.

[18] *People v. Gragasin*, G.R. No. 186496, August 25, 2009.

[19] *People v. Estrada*, G.R. No. 178318, January 15, 2010; citing *People v. Dalisay*, G.R. No. 188106, November 25, 2009.

Penalty Imposed

The Revised Penal Code punishes statutory rape with *reclusion perpetua*.[20] The CA thus correctly affirmed the sentence imposed. The amount of PhP 50,000 as civil indemnity and PhP 50,000 as moral damages awarded are in accordance with current jurisprudence.[21] Additionally, we award exemplary damages of PhP 30,000 to serve as a public example to deter molesters of hapless individuals.[22]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02796 finding accused-appellant Crizaldo Pacheco y Villanueva guilty is *AFFIRMED*, with the modification that he is further ordered to pay PhP 30,000 in exemplary damages.

SO ORDERED.

Corona (Chairperson), Carpio Morales,[*] *Nachura,* and *Mendoza, JJ.,* concur.

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[20] Art. 266-A. *Rape, When and How Committed.*—Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x x x x x x x

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Art. 266-B. *Penalties.*—Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.* x x x

[21] *People v. Buban*, G.R. No. 172710, October 30, 2009.

[22] *People v. Ofemiano, supra* note 11; citing *People v. Pabol*, G.R. No. 187084, October 12, 2009.

[*] Additional member per July 20, 2009 raffle.

FIRST DIVISION

[G.R. No. 188471. April 20, 2010]

FRANCISCO ALONSO, substituted by MERCEDES V. ALONSO, TOMAS V. ALONSO and ASUNCION V. ALONSO, *petitioners, vs.* **CEBU COUNTRY CLUB, INC.,** *respondent,* **REPUBLIC OF THE PHILIPPINES, represented by the OFFICE OF THE SOLICITOR GENERAL,** *public respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; PETITIONERS BREACHED THE HIERARCHY OF COURTS BY COMING DIRECTLY TO THE SUPREME COURT TO APPEAL THE ASSAILED ISSUANCES OF THE REGIONAL TRIAL COURT VIA PETITION FOR REVIEW ON *CERTIORARI*; HIERARCHY OF COURTS IS ESSENTIAL TO THE EFFICIENT FUNCTIONING OF THE COURTS AND THE ADMINISTRATION OF JUSTICE.— The Court notes that the petitioners are guilty of two violations that warrant the immediate dismissal of the petition for review on *certiorari*. The first refers to the petitioners' breach of the hierarchy of courts by coming directly to the Court to appeal the assailed issuances of the RTC *via* petition for review on *certiorari*. They should not have done so, bypassing a review by the Court of Appeals (CA), because the hierarchy of courts is essential to the efficient functioning of the courts and to the orderly administration of justice. Their non-observance of the hierarchy of courts has forthwith enlarged the docket of the Court by one more case, which, though it may not seem burdensome to the layman, is one case too much to the Court, which has to devote time and effort in poring over the papers submitted herein, only to discover in the end that a review should have first been made by the CA. The time and effort could have been dedicated to other cases of importance and impact on the lives and rights of others.

2. ID.; ID.; THE HIERARCHY OF COURTS IS NOT TO BE LIGHTLY REGARDED BY LITIGANTS; SIGNIFICANCE OF ESTABLISHMENT OF THE COURT OF APPEALS.—

The hierarchy of courts is not to be lightly regarded by litigants. The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The Court has thus been freed to better discharge its constitutional duties and perform its most important work, which, in the words of Dean Vicente G. Sinco, "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights." The need to elevate the matter first to the CA is also underscored by the reality that determining whether the petitioners were real parties in interest entitled to bring this appeal against the denial by the RTC of the OSG's *motion for the issuance of a writ of execution* was a mixed question of fact and law. As such, the CA was in the better position to review and to determine. In that regard, the petitioners violate Section 1, Rule 45 of the 1997 *Rules of Civil Procedure*, which demands that an appeal by petition for review on *certiorari* be limited to questions of law.

3. ID.; FORUM SHOPPING; FAILURE OF CO-PETITIONERS TO EXECUTE SWORN CERTIFICATION AGAINST FORUM SHOPPING WARRANTS DISMISSAL OF PETITION; THE SIGNING OF THE CERTIFICATION BY ONLY ONE OF THE PETITIONERS COULD NOT BE PRESUMED TO REFLECT THE PERSONAL KNOWLEDGE OF THE OTHER PETITIONERS OF THE FILING OR NON-FILING OF ANY OR SIMILAR ACTION OR CLAIM.— The second violation concerns the omission of a sworn certification against forum shopping from the petition for review on *certiorari*. Section 4, Rule 45 of the 1997 *Rules of Civil Procedure* requires that the petition for review should contain, among others, the sworn certification on the undertakings provided in the last paragraph of Section 2, Rule 42 of the 1997 *Rules of Civil Procedure*. Only petitioner Tomas V. Alonso has executed and signed the sworn certification against forum shopping attached to the petition. Although neither

of his co-petitioners – Mercedes V. Alonso and Asuncion V. Alonso – has joined the certification, Tomas did not present any written express authorization in his favor authorizing him to sign the certification in their behalf. The signing of the certification by only one of the petitioners could not be presumed to reflect the personal knowledge by his co-petitioners of the filing or non-filing of any similar action or claim. Hence, the failure of Mercedes and Asuncion to sign and execute the certification along with Tomas warranted the dismissal of their petition.

4. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REAL PARTY IN INTEREST; EXPLAINED.— Every action must be prosecuted or defended in the name of the real party in interest, unless otherwise authorized by law or the rules. A real party in interest is one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The rule refers to a *real* or *present* substantial interest, as distinguished from a mere expectancy; or from a future, contingent, subordinate, or consequential interest. One having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action.

5. ID.; ID.; ID.; BEING THE LEGAL OWNER OF LOT NO. 727-D-2, THE GOVERNMENT IS THE PROPER PARTY ENTITLED TO ASSAIL THE DENIAL OF THE OFFICE OF THE SOLICITOR GENERAL'S MOTION FOR ISSUANCE OF WRIT OF EXECUTION.— An appeal, like this one, is an action to be prosecuted by a party in interest before a *higher* court. In order for the appeal to prosper, the litigant must of necessity continue to hold a *real* or *present* substantial interest that entitles him to the avails of the suit on appeal. If he does not, the appeal, as to him, is an exercise in futility. So it is with the petitioners! In contrast, the Government, being the legal owner of Lot No. 727-D-2, is the only party adversely affected by the denial, and is the proper party entitled to assail the denial. However, its manifest desistance from the execution of the decision effectively barred any challenge against the denial, for its non-appeal rendered the denial final and immutable.

6. ID.; ID.; ID.; R.A. NO. 9443 GIVES PETITIONERS NO LEGAL INTEREST TO ASSAIL THE DENIAL OF THE MOTION FOR EXECUTION.— The law expressly declares as valid "(a)ll existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds of Cebu Province and/or Cebu City covering any portion of the Banilad Friar Lands Estate," and recognizes the registered owners as absolute owners. To benefit from R.A. No. 9443, therefore, a person must hold as a condition precedent a duly issued Transfer Certificate of Title or a Reconstituted Certificate of Title. Although Lot 727-D-2 was earlier declared to be owned by the Government in G.R. No. 130876, R.A. No. 9443 later validated Cebu Country Club's registered ownership due to its holding of TCT No. RT-1310 (T-11351) *in its own name*. As the OSG explained in its *manifestation in lieu of comment* (filed in the RTC *vis-à-vis* the petitioners' *motion for reconsideration* against the RTC's denial of the OSG's *motion for issuance of a writ of execution*), the enactment of R.A. No. 9443 had "mooted the final and executory Decision of the Supreme Court in "*Alonso v. Cebu Country Club, Inc.*," docketed as G.R. No. 130876, which declared the Government as the owner of Lot 727-D-2 based on the absence of signature and approval of the then Secretary of Interior"; and that the decision in G.R. No. 130876 had "ceased to have any practical effect" as the result of the enactment of R.A. No. 9443, and had thereby become "academic."

7. ID.; ID.; ID.; ID.; PETITIONERS COULD NOT BENEFIT FROM R.A. NO. 9443 BECAUSE OF THEIR NON-COMPLIANCE WITH THE EXPRESS CONDITION OF HOLDING ANY TRANSFER CERTIFICATE OF TITLE OR RECONSTITUTED CERTIFICATE OF TITLE RESPECTING LOT 727-D-2 OR ANY PORTION THEREOF.— Petitioners could not benefit from R.A. No. 9443 because of their non-compliance with the express condition of holding any Transfer Certificate of Title or Reconstituted Certificate of Title respecting Lot 727-D-2 or any portion thereof. The appropriate recourse for the petitioners, if they persist in the belief that the TCT of Cebu Country Club should be nullified, is to compel the OSG through the special civil action for *mandamus* to commence the action to annul on the ground that Cebu Country Club had obtained

its title to Lot 7217-D-2 through fraud. Yet, that recourse is no longer availing, for the decision in G.R. No. 130876 explicitly found and declared that the reconstituted title of Cebu Country Club had not been obtained through fraud.

APPEARANCES OF COUNSEL

Gavino A.C. Benitez for petitioners.
*The Solicitor Gen*eral for public respondent.
T. Almase S. Suarez & M. Almase-Martinez for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

By petition for review on *certiorari*, the petitioners appeal the order dated December 28, 2007 of the Regional Trial Court (RTC), Branch 20, in Cebu City, denying the *motion for issuance of writ of execution* of the Office of the Solicitor General (OSG) in behalf of the Government, and the order dated April 24, 2009, denying their *motion for reconsideration* filed against the first order.

Antecedents

The antecedent facts are those established in *Alonso v. Cebu Country Club*,[1] which follow.

Petitioner Francisco M. Alonso (Francisco) was the only son and sole heir of the late spouses Tomas N. Alonso and Asuncion Medalle. Francisco died during the pendency of this case, and was substituted by his legal heirs, namely: his surviving spouse, Mercedes V. Alonso, his son Tomas V. Alonso (Tomas) and his daughter Asuncion V. Alonso.[2]

In 1992, Francisco discovered documents showing that his father Tomas N. Alonso had acquired Lot No. 727 of the Banilad

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[1] G.R. No. 130876, January 31, 2002, 375 SCRA 390.

[2] *Id.*, p. 393.

Friar Lands Estate from the Government in or about the year 1911; that the original vendee of Lot No. 727 had assigned his sales certificate to Tomas N. Alonso, who had been consequently issued Patent No. 14353; and that on March 27, 1926, the Director of Lands had executed a final deed of sale in favor of Tomas N. Alonso, but the final deed of sale had not been registered with the Register of Deeds because of lack of requirements, like the approval of the final deed of sale by the Secretary of Agriculture and Natural Resources, as required by law.[3]

Francisco subsequently found that the certificate of title covering Lot No. 727-D-2 of the Banilad Friar Lands Estate had been "administratively reconstituted from the owner's duplicate" of Transfer Certificate of Title (TCT) No. RT-1310 in the name of United Service Country Club, Inc., the predecessor of respondent Cebu Country Club, Inc. (Cebu Country Club); and that upon the order of the court that had heard the petition for reconstitution of the TCT, the name of the registered owner in TCT No. RT-1310 had been changed to that of Cebu Country Club; and that the TCT stated that the reconstituted title was a transfer from TCT No. 1021.[4]

It is relevant to mention at this point that the current TCT covering Lot 727-D-2 in the name of Cebu Country Club is TCT No. 94905, which was entered in the land records of Cebu City on August 8, 1985.[5]

With his discoveries, Francisco formally demanded upon Cebu Country Club to restore the ownership and possession of Lot 727-D-2 to him. However, Cebu Country Club denied Francisco's demand and claim of ownership, and refused to deliver the possession to him.[6]

On September 25, 1992, Francisco commenced against Cebu Country Club in the RTC in Cebu City an action for the declaration

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[3] *Id.*, pp. 393-394.

[4] *Id.*, p. 394.

[5] Annex 3, Comment on the petition for review on *certiorari*.

[6] *Rollo*, p. 394.

of nullity and non-existence of deed/title, the cancellation of certificates of title, and the recovery of property. On November 5, 1992, Cebu Country Club filed its answer with counterclaim.[7]

On May 7, 1993, the RTC decided in favor of Cebu Country Club.

Both parties appealed to the Court of Appeals (CA), which ultimately affirmed the RTC on March 31, 1997. Thus, Francisco filed a *motion for reconsideration*, which was denied on October 2, 1997.[8]

Nothing daunted, Francisco appealed to this Court (G.R. No. 130876).

On January 31, 2002, this Court decided G.R. No. 130876, decreeing:

> WHEREFORE, we DENY the petition for review. However, we SET ASIDE the decision of the Court of Appeals and that of the Regional Trial Court, Cebu City, Branch 08.
>
> IN LIEU THEREOF, we DISMISS the complaint and counterclaim of the parties in Civil Cases No. CEB 12926 of the trial court. We declare that Lot No. 727 D-2 of the Banilad Friar Lands Estate covered by Original Certificate of Title Nos. 251, 232, and 253 legally belongs to the Government of the Philippines.[9]

The petitioners sought a reconsideration. On December 5, 2003, however, the Court denied their *motion for reconsideration*.[10] Hence, the decision in G.R. No. 130876 became final and executory.

In late 2004, the Government, through the OSG, filed in the RTC a *motion for the issuance of a writ of execution*.[11] Cebu Country Club opposed the *motion for the issuance of a writ of execution* in due course.

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[7] *Id.*, p. 395.

[8] *Id.*, pp. 396-398.

[9] *Id.*, p. 410.

[10] G.R. No. 130876, December 5, 2003, 417 SCRA 115.

[11] *Rollo*, p. 15.

Later on, the proceedings on the OSG's *motion for the issuance of a writ of execution* at the instance of Cebu Country Club in deference to the on-going hearings being conducted by the Committee on Natural Resources of the House of Representatives on a proposed bill to confirm the TCTs and reconstituted titles covering the Banilad Friar Lands Estate in Cebu City.[12] The Congress ultimately enacted a law to validate the TCTs and reconstituted titles covering the Banilad Friar Lands Estate in Cebu City. This was Republic Act No. 9443,[13] effective on July 27, 2007.

Thereafter, both Cebu Country Club and the OSG brought the passage of R.A. No. 9443 to the attention of the RTC for its consideration in resolving the OSG's *motion for the issuance of a writ of execution*.[14] On December 28, 2007, therefore, the RTC denied the OSG's *motion for the issuance of a writ of execution* through the first appealed order.[15]

The petitioners filed a *motion for reconsideration* dated February 1, 2008, questioning the denial of the OSG's *motion for the issuance of a writ of execution*.[16]

Upon being directed by the RTC to comment on the petitioners' *motion for reconsideration,* the OSG manifested in writing that the Government was no longer seeking the execution of the decision in G.R. No. 130876, subject to its reservation to contest any other titles within the Banilad Friar Lands Estate should clear evidence show such titles as having been obtained through fraud.[17]

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[12] *Id*.

[13] Entitled *An Act Confirming and Declaring, Subject to Certain Exceptions, the Validity of Existing Transfer Certificate of Title Covering the Banilad Friar Lands Estate, Situated in the First District of Cebu.*

[14] *Rollo,* p. 17.

[15] *Id.,* pp. 42-43.

[16] *Id.,* p. 18.

[17] *Id.,* p. 176.

After the filing of the OSG's comment, the RTC issued the second appealed order, denying the petitioners' *motion for reconsideration*, giving the following reasons:

1. The party who had a direct interest in the execution of the decision and the reconsideration of the denial of the motion for execution was the Government, represented only by the OSG; hence, the petitioners had no legal standing to file the *motion for reconsideration,* especially that they were not authorized by the OSG for that purpose;

2. R.A. No. 9443 "confirms and declares as valid" all "existing" TCTs and reconstituted titles; thereby, the State in effect waived and divested itself of whatever title or ownership over the Banilad Friar Lands Estate in favor of the registered owners thereof, including Lot 727 D-2; and

3. The situation of the parties had materially changed, rendering the enforcement of the final and executory judgment unjust, inequitable, and impossible, because Cebu Country Club was now recognized by the State itself as the absolute owner of Lot 727 D-2.[18]

Hence, the petitioners appeal by petition for review on *certiorari*.

Contentions of the Petitioners

The petitioners challenge the orders dated December 28, 2007 and April 29, 2009, because:

1. R.A. No. 9443 did not improve Cebu Country Club's plight, inasmuch as R.A. No. 9443 presupposed first a sales certificate that lacked the required signature, but Cebu Country Club did not have such sales certificate. Moreover, the titleholders were in fact the owners of the lands covered by their respective titles, which was not true with Cebu Country Club due to its being already adjudged with finality to be not the owner of Lot 727-D-2. Lastly, Cebu Country Club's title was hopelessly defective, as found by the Supreme Court itself;

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[18] *Id.,* pp. 44-47.

2. The doctrine of law of the case barred the application of R.A. No. 9443 to Cebu Country Club;

3. The RTC's declaration that R.A. No. 9443 confirmed Cebu Country Club as the absolute owner of Lot 727-D-2 despite the prior and final judgment of the Supreme Court that Cebu Country Club was not the owner was unconstitutional, because it virtually allowed the legislative review of the Supreme Court's decision rendered against Cebu Country Club;

4. The use of R.A. No. 9443 as a waiver on the part of the Government *vis-à-vis* Cebu Country Club was not only misplaced but downrightly repugnant to Act 1120, the law governing the legal disposition and alienation of Friar Lands; and

5. The petitioners had the requisite standing to question the patent errors of the RTC, especially in the face of the unholy conspiracy between the OSG and Cebu Country Club, on the one hand, and, on the other hand, the passage of R.A. No. 9443 and DENR Memorandum No. 16, both of which in fact made their predecessor Tomas N. Alonso's sales certificate and patent valid.[19]

Issues

The Court confronts and resolves the following issues, to wit:

1. Whether or not the petitioners were the real parties-in-interest to question the denial by the RTC of the OSG's *motion for the issuance of a writ of execution*;

2. Whether or not R.A. No. 9443 gave the petitioners a legal interest to assail the RTC's orders; and

3. Whether or not the petitioners can appeal by petition for review on *certiorari* in behalf of the OSG.

Ruling

The petition for review is denied due course.

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[19] *Id.*, pp. 22-23.

A.

Preliminary Considerations:
Petitioners contravene the hierarchy of courts,
and the petition is fatally defective

Before delving on the stated issues, the Court notes that the petitioners are guilty of two violations that warrant the immediate dismissal of the petition for review on *certiorari*.

The first refers to the petitioners' breach of the hierarchy of courts by coming directly to the Court to appeal the assailed issuances of the RTC *via* petition for review on *certiorari*. They should not have done so, bypassing a review by the Court of Appeals (CA), because the hierarchy of courts is essential to the efficient functioning of the courts and to the orderly administration of justice. Their non-observance of the hierarchy of courts has forthwith enlarged the docket of the Court by one more case, which, though it may not seem burdensome to the layman, is one case too much to the Court, which has to devote time and effort in poring over the papers submitted herein, only to discover in the end that a review should have first been made by the CA. The time and effort could have been dedicated to other cases of importance and impact on the lives and rights of others.

The hierarchy of courts is not to be lightly regarded by litigants. The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The Court has thus been freed to better discharge its constitutional duties and perform its most important work, which, in the words of Dean Vicente G. Sinco,[20] "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction

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[20] *Philippine Political Law*, 10th Edition, p. 323.

of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights."[21]

The need to elevate the matter first to the CA is also underscored by the reality that determining whether the petitioners were real parties in interest entitled to bring this appeal against the denial by the RTC of the OSG's *motion for the issuance of a writ of execution* was a mixed question of fact and law. As such, the CA was in the better position to review and to determine. In that regard, the petitioners violate Section 1, Rule 45 of the 1997 *Rules of Civil Procedure*, which demands that an appeal by petition for review on *certiorari* be limited to questions of law.[22]

The second violation concerns the omission of a sworn certification against forum shopping from the petition for review on *certiorari*. Section 4, Rule 45 of the 1997 *Rules of Civil Procedure* requires that the petition for review should contain, among others, the sworn certification on the undertakings provided in the last paragraph of Section 2, Rule 42 of the 1997 *Rules of Civil Procedure, viz*:

Section 2. xxx

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar

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[21] *Conde v. Intermediate Appellate Court*, 144 SCRA 144.

[22] Section 1. *Filing of petition with Supreme Court.*—A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (n)

Only petitioner Tomas V. Alonso has executed and signed the sworn certification against forum shopping attached to the petition. Although neither of his co-petitioners – Mercedes V. Alonso and Asuncion V. Alonso – has joined the certification, Tomas did not present any written express authorization in his favor authorizing him to sign the certification in their behalf. The signing of the certification by only one of the petitioners could not be presumed to reflect the personal knowledge by his co-petitioners of the filing or non-filing of any similar action or claim.[23] Hence, the failure of Mercedes and Asuncion to sign and execute the certification along with Tomas warranted the dismissal of their petition.[24]

B.

Petitioners are not proper parties to appeal and assail the order of the RTC

The petitioners are relentless in insisting that their claim to Lot No. 727-D-2 of the Banilad Friar Lands Estate should be preferred to that of Cebu Country Club, despite the final judgment in G.R. No. 130876 being adverse to their claim. Their insistence

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[23] *Gonzales v. Balikatan Kilusang Bayan sa Pananalapi, Inc.*, G.R. No. 150859, March 28, 2005, 454 SCRA 111, 115.

[24] Rule 45, 1997 *Rules of Civil Procedure*, relevantly states:

> Section 5. *Dismissal or denial of petition.* — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and **the contents of the documents which should accompany the petition shall be sufficient ground for the dismissal thereof**.
>
> The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (3a)

raises the need to resolve once and for all whether or not the petitioners retained any legal right to assert over Lot No. 727-D-2 following the Government's manifest desistance from the execution of the judgment in G.R. No. 130876 against Cebu Country Club.

The above-noted defects of the petition for review notwithstanding, therefore, the Court has now to address and resolve the stated issues on the sole basis of the results the Court earlier reached in G.R. No. 130876. In this regard, whether or not the petitioners are the proper parties to bring this appeal is decisive.

After careful consideration, the Court finds that the cause of the petitioners instantly fails.

In G.R. No. 130876, the Court found that the petitioners did not validly acquire ownership of Lot No. 727-D-2, and declared that Lot No. 727 D-2 legally belonged to the Government, thus:

> The second issue is whether the Court of Appeals erred in ruling that the Cebu Country Club, Inc. is owner of Lot No. 727.
>
> Admittedly, **neither petitioners nor their predecessor had any title to the land in question.** The most that petitioners could claim was that the Director of Lands issued a sales patent in the name of Tomas N. Alonso. **The sales patent,** however, **and even the corresponding deed of sale were not registered with the Register of Deeds and no title was ever issued in the name of the latter**. This is because there were basic requirements not complied with, the most important of which was that **the deed of sale executed by the Director of Lands was not approved by the Secretary of Agriculture and Natural Resources.** Hence, **the deed of sale was void.** "Approval by the Secretary of Agriculture and Commerce is indispensable for the validity of the sale." Moreover, Cebu Country Club, Inc. was in possession of the land since 1931, and had been paying the real estate taxes thereon based on tax declarations in its name with the title number indicated thereon. Tax receipts and declarations of ownership for taxation purposes are strong evidence of ownership. This Court has ruled that although tax declarations or realty tax payments are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of

owner for no one in his right mind will be paying taxes for a property that is not in his actual or constructive possession.

Notwithstanding this fatal defect, the Court of Appeals ruled that "there was substantial compliance with the requirement of Act No. 1120 to validly convey title to said lot to Tomas N. Alonso."

On this point, the Court of Appeals erred.

Under Act No. 1120, which governs the administration and disposition of friar lands, the purchase by an actual and bona fide settler or occupant of any portion of friar land shall be "agreed upon between the purchaser and the Director of Lands, subject to the approval of the Secretary of Agriculture and Natural Resources *(mutatis mutandis)*."

In his Memorandum filed on May 25, 2001, the Solicitor General submitted to this Court certified copies of Sale Certificate No. 734, in favor of Leoncio Alburo, and Assignment of Sale Certificate No. 734, in favor of Tomas N. Alonso. Conspicuously, both instruments do not bear the signature of the Director of Lands and the Secretary of the Interior. They also do not bear the approval of the Secretary of Agriculture and Natural Resources.

Only recently, in *Jesus P. Liao v. Court of Appeals*, the Court has ruled categorically that **approval by the Secretary of Agriculture and Commerce of the sale of friar lands is indispensable for its validity**, hence, the absence of such approval made the sale **null and void *ab-initio***. Necessarily, there can be no valid titles issued on the basis of such sale or assignment. **Consequently, petitioner Francisco's father did not have any registerable title to the land in question. Having none, he could not transmit anything to his sole heir, petitioner Francisco Alonso or the latter's heirs.**

In a vain attempt at showing that he had succeeded to the estate of his father, on May 4, 1991, petitioner Francisco Alonso executed an affidavit adjudicating the entire estate to himself (Exh. "Q"), duly published in a newspaper of general circulation in the province and city of Cebu (Exh. "Q-1"). Such affidavit of self-adjudication is inoperative, if not void, not only because there was nothing to adjudicate, but equally important because petitioner Francisco did not show proof of payment of the estate tax and submit a certificate of clearance from the Commissioner of Internal Revenue. Obviously, petitioner Francisco has not paid the estate taxes.

Consequently, we rule that neither Tomas N. Alonso nor his son Francisco M. Alonso or the latter's heirs are the lawful owners of Lot No. 727 in dispute. xxx.[25]

The pronouncement in G.R. No. 130876 renders beyond dispute that the non-execution of the judgment would not adversely affect the petitioners, who now hold no right whatsoever in Lot No. 727-D-2. Otherwise put, they are not the proper parties to assail the questioned orders of the RTC, because they stand to derive nothing from the execution of the judgment against Cebu Country Club.

Every action must be prosecuted or defended in the name of the real party in interest, unless otherwise authorized by law or the rules.[26] A real party in interest is one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[27] "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The rule refers to a *real* or *present* substantial interest, as distinguished from a mere expectancy; or from a future, contingent, subordinate, or consequential interest.[28] One having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action.[29]

Thus, an appeal, like this one, is an action to be prosecuted by a party in interest before a *higher* court. In order for the appeal to prosper, the litigant must of necessity continue to hold a *real* or *present* substantial interest that entitles him to the avails of the suit on appeal. If he does not, the appeal, as to him, is an exercise in futility. So it is with the petitioners!

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[25] *Supra,* note 1, 375 SCRA 390, 403-405.

[26] Section 2. Rule 3 of the 1997 *Rules of Civil Procedure.*

[27] *Id*.

[28] *Quisumbing v. Sandiganbayan*, G.R. No. 138437, November 14, 2008, 571 SCRA 7, 15.

[29] *Ralla v. Ralla,* G.R. No. 78646, July 23, 1991, 199 SCRA 495.

In contrast, the Government, being the legal owner of Lot No. 727-D-2, is the only party adversely affected by the denial, and is the proper party entitled to assail the denial.[30] However, its manifest desistance from the execution of the decision effectively barred any challenge against the denial, for its non-appeal rendered the denial final and immutable.

C.

R.A. No. 9443 gives petitioners no legal interest to assail the denial of the motion for execution

Section 1 of R.A. No. 9443 provides:

Section 1. **All existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds of Cebu Province and/or Cebu City covering any portion of the Banilad Friar Lands Estate**, notwithstanding the lack of signatures and/or approval of the then Secretary of Interior (later

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[30] *Cañete v. Genuino Ice Company, Inc.*, G.R. No. 154080, January 22, 2008, 542 SCRA 206, 220-222, where the petitioners admitted not to be the owners of the land, but the Government, the Court declared: "xxx **petitioners may not be considered the real parties in interest** for the purpose of maintaining the suit for cancellation of the subject titles. The Court of Appeals is correct in declaring that **only the State, through the Solicitor General, may institute such suit.** Jurisprudence on the matter has been settled and the issue need not be belabored."); *Gabilla v. Barriga*, No. L-28917, September 30, 1971, 41 SCRA 131 (where the Court declared: "xxx **In his amended complaint the plaintiff makes no pretense at all that any part of the land covered by the defendant's title was privately owned by him or by his predecessors-in-interest. Indeed, it is admitted therein that the said land was at all times a part of the public domain until December 18, 1964, when the government issued a title thereon in favor of the defendant. Thus, if there is any person or entity [entitled] to relief, it can only be the government**."); *Heirs of Ambrocio Kionisala v. Heirs of Honorio Dacut*, G.R. No. 147379, February 27, 2002, 378 SCRA 206, 214 (where the Court held: "**Where the plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were canceled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands**.").

Secretary of Agriculture and Natural Resources) and/or the then Chief of the Bureau of Public Lands (later Director of Public Lands) in the copies of the duly executed Sale Certificates and Assignments of Sale Certificates, as the case may be, now on file with the Community Environment and Natural Resources Office (CENRO), Cebu City, **are hereby declared as valid titles and the registered owners recognized as absolute owners thereof.**

The law expressly declares as valid "(a)ll existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds of Cebu Province and/or Cebu City covering any portion of the Banilad Friar Lands Estate," and recognizes the registered owners as absolute owners. To benefit from R.A. No. 9443, therefore, a person must hold as a condition precedent a duly issued Transfer Certificate of Title or a Reconstituted Certificate of Title.

Although Lot 727-D-2 was earlier declared to be owned by the Government in G.R. No. 130876, R.A. No. 9443 later validated Cebu Country Club's registered ownership due to its holding of TCT No. RT-1310 (T-11351) *in its own name*. As the OSG explained in its *manifestation in lieu of comment*[31] (filed in the RTC *vis-à-vis* the petitioners' *motion for reconsideration* against the RTC's denial of the OSG's *motion for issuance of a writ of execution*), the enactment of R.A. No. 9443 had "mooted the final and executory Decision of the Supreme Court in "*Alonso v. Cebu Country Club, Inc*.," docketed as G.R. No. 130876, which declared the Government as the owner of Lot 727-D-2 based on the absence of signature and approval of the then Secretary of Interior"; and that the decision in G.R. No. 130876 had "ceased to have any practical effect" as the result of the enactment of R.A. No. 9443, and had thereby become "academic."[32]

On the other hand, the petitioners could not benefit from R.A. No. 9443 because of their non-compliance with the express

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[31] This was submitted by the OSG to the RTC in connection with petitioners' motion for reconsideration dated January 28, 2008.

[32] *Rollo*, p. 175.

condition of holding any Transfer Certificate of Title or Reconstituted Certificate of Title respecting Lot 727-D-2 or any portion thereof.

The appropriate recourse for the petitioners, if they persist in the belief that the TCT of Cebu Country Club should be nullified, is to compel the OSG through the special civil action for *mandamus* to commence the action to annul on the ground that Cebu Country Club had obtained its title to Lot 7217-D-2 through fraud. Yet, that recourse is no longer availing, for the decision in G.R. No. 130876 explicitly found and declared that the reconstituted title of Cebu Country Club had not been obtained through fraud. Said the Court:

> On the question that TCT No. RT-1310 (T-11351) bears the same number as another title to another land, **we agree with the Court of Appeals that there is nothing fraudulent with the fact that Cebu Country Club, Inc.'s reconstituted title bears the same number as the title of another parcel of land.** This came about because under General Land Registration Office (GLRO) Circular No. 17, dated February 19, 1947, and Republic Act No. 26 and Circular No. 6, RD 3, dated August 5, 1946, which were in force at the time the title was reconstituted on July 26, 1948, the titles issued before the inauguration of the Philippine Republic were numbered consecutively and the titles issued after the inauguration were numbered also consecutively starting with No. 1, so that eventually, the titles issued before the inauguration were duplicated by titles issued after the inauguration of the Philippine Republic. xxx.
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> x x x x x x x x x
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> **Petitioners next argue that the reconstituted title of Cebu Country Club, Inc. had no lawful source to speak of; it was reconstituted through extrinsic and intrinsic fraud in the absence of a deed of conveyance in its favor.** In truth, however, **reconstitution was based on the owner's duplicate of the title, hence, there was no need for the covering deed of sale or other modes of conveyance. Cebu Country Club, Inc. was admittedly in possession of the land since long before the Second World War, or since 1931. In fact, the original title (TCT No. 11351) was issued to the United Service Country Club, Inc. on November 19, 1931 as a transfer from Transfer Certificate of**

Title No. 1021. More importantly, Cebu Country Club, Inc. paid the realty taxes on the land even before the war, and tax declarations covering the property showed the number of the TCT of the land. Cebu Country Club, Inc. produced receipts showing real estate tax payments since 1949. On the other hand, petitioner failed to produce a single receipt of real estate tax payment ever made by his father since the sales patent was issued to his father on March 24, 1926. Worse, admittedly petitioner could not show any [T]orrens title ever issued to Tomas N. Alonso, because, as said, the deed of sale executed on March 27, 1926 by the Director of Lands was not approved by the Secretary of Agriculture and Natural Resources and could not be registered. "Under the law, it is the act of registration of the deed of conveyance that serves as the operative act to convey the land registered under the Torrens system. The act of registration creates constructive notice to the whole world of the fact of such conveyance." On this point, **petitioner alleges that Cebu Country Club, Inc. obtained its title by fraud in connivance with personnel of the Register of Deeds in 1941 or in 1948**, **when the title was administratively reconstituted. Imputations of fraud must be proved by clear and convincing evidence. Petitioner failed to adduce evidence of fraud.** In an action for re-conveyance based on fraud, he who charges fraud must prove such fraud in obtaining a title. **"In this jurisdiction, fraud is never presumed." The strongest suspicion cannot sway judgment or overcome the presumption of regularity.** "The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass." **Worse, the imputation of fraud was so tardily brought, some forty-four (44) years or sixty-one (61) years after its supposed occurrence,** that is, from the administrative reconstitution of title on July 26, 1948, or from the issuance of the original title on November 19, 1931, **that verification is rendered extremely difficult, if not impossible, especially due to the supervening event of the second world war during which practically all public records were lost or destroyed, or no longer available.**[33]

IN VIEW OF THE FOREGOING, the petition for review on *certiorari* is denied for lack of merit.

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[33] *Supra,* note 1, pp. 399-402.

The Court declares that Cebu Country Club, Inc. is the exclusive owner of Lot No.727-D-2 of the Banilad Friar Lands Estate, as confirmed by Republic Act No. 9443.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 191002. April 20, 2010]

ARTURO M. DE CASTRO, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC) and PRESIDENT GLORIA MACAPAGAL-ARROYO,** *respondents.*

[G.R. No. 191032. April 20, 2010]

JAIME N. SORIANO, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[G.R. No. 191057. April 20, 2010]

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[A.M. No. 10-2-5-SC. April 20, 2010]

IN RE APPLICABILITY OF SECTION 15, ARTICLE VII OF THE CONSTITUTION TO APPOINTMENTS TO THE JUDICIARY, ESTELITO P. MENDOZA, *petitioner,*

[G.R. No. 191149. April 20, 2010]

JOHN G. PERALTA, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.* **PETER IRVING CORVERA; CHRISTIAN ROBERT S. LIM; ALFONSO V. TAN, JR.; NATIONAL UNION OF PEOPLE'S LAWYERS; MARLOU B. UBANO; INTEGRATED BAR OF THE PHILIPPINES-DAVAO DEL SUR CHAPTER, represented by its Immediate Past President, ATTY. ISRAELITO P. TORREON, and the latter in his own personal capacity as a MEMBER of the PHILIPPINE BAR; MITCHELL JOHN L. BOISER; BAGONG ALYANSANG BAYAN (BAYAN) CHAIRMAN DR. CAROLINA P. ARAULLO; BAYAN SECRETARY GENERAL RENATO M. REYES, JR.; CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE) CHAIRMAN FERDINAND GAITE; KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY) SECRETARY GENERAL GLORIA ARELLANO; ALYANSA NG NAGKAKAISANG KABATAAN NG SAMBAYANAN PARA SA KAUNLARAN (ANAKBAYAN) CHAIRMAN KEN LEONARD RAMOS; TAYO ANG PAG-ASA CONVENOR ALVIN PETERS; LEAGUE OF FILIPINO STUDENTS (LFS) CHAIRMAN JAMES MARK TERRY LACUANAN RIDON; NATIONAL UNION OF STUDENTS OF THE PHILIPPINES (NUSP) CHAIRMAN EINSTEIN RECEDES; COLLEGE EDITORS GUILD OF THE PHILIPPINES (CEGP) CHAIRMAN VIJAE ALQUISOLA; and STUDENT CHRISTIAN MOVEMENT OF THE PHILIPPINES (SCMP) CHAIRMAN MA. CRISTINA ANGELA GUEVARRA; WALDEN F. BELLO and LORETTA ANN P. ROSALES; WOMEN TRIAL LAWYERS ORGANIZATION OF THE PHILIPPINES, represented by YOLANDA QUISUMBING-JAVELLANA; BELLEZA ALOJADO DEMAISIP; TERESITA**

GANDIONCO-OLEDAN; MA. VERENA KASILAG-VILLANUEVA; MARILYN STA. ROMANA; LEONILA DE JESUS; and GUINEVERE DE LEON; AQUILINO Q. PIMENTEL, JR., *intervenors.*

[G.R. No. 191342. April 20, 2010]

ATTY. AMADOR Z. TOLENTINO, JR., (IBP Governor-Southern Luzon), and ATTY. ROLAND B. INTING (IBP Governor-Eastern Visayas), *petitioners, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[G.R. No. 191420. April 20, 2010]

PHILIPPINE BAR ASSOCIATION, INC., *petitioner, vs.* **JUDICIAL AND BAR COUNCIL and HER EXCELLENCY GLORIA MACAPAGAL-ARROYO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF *STARE DECISIS*; EXPLAINED.— Most of the movants contend that the principle of *stare decisis* is controlling, and accordingly insist that the Court has erred in disobeying or abandoning *Valenzuela*. The contention has no basis. *Stare decisis* derives its name from the Latin maxim *stare decisis et non quieta movere, i.e.*, to adhere to precedent and not to unsettle things that are settled. It simply means that a principle underlying the decision in one case is deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority. The decisions relied upon as precedents are commonly those of appellate courts, because the decisions of the trial courts may be appealed to higher courts and for that reason are probably not the best evidence of the rules of law laid down.

2. ID.; ID.; ID.; ID.; THE SUPREME COURT, AS THE HIGHEST COURT OF THE LAND, MAY BE GUIDED BUT IS NOT

CONTROLLED BY PRECEDENT.— Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them. In a hierarchical judicial system like ours, the decisions of the higher courts bind the lower courts, but the courts of co-ordinate authority do not bind each other. The one highest court does not bind itself, being invested with the innate authority to rule according to its best lights. The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament. But ours is not a common-law system; hence, judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision *may be* followed as a precedent in a subsequent case only when its reasoning and justification are relevant, and the court in the latter case accepts such reasoning and justification to be applicable to the case. The application of the precedent is for the sake of convenience and stability. For the intervenors to insist that *Valenzuela* ought not to be disobeyed, or abandoned, or reversed, and that its wisdom should guide, if not control, the Court in this case is, therefore, devoid of rationality and foundation. They seem to conveniently forget that the Constitution itself recognizes the innate authority of the Court *en banc* to modify or reverse a doctrine or principle of law laid down in any decision rendered *en banc* or in division.

3. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; INTERVENORS ARE GROSSLY MISLEADING THE PUBLIC BY THEIR INSISTENCE THAT THE CONSTITUTIONAL COMMISSION EXTENDED TO THE JUDICIARY THE BAN ON PRESIDENTIAL APPOINTMENTS DURING THE PERIOD STATED IN SECTION 15, ARTICLE VII OF THE 1987 CONSTITUTION.— Some intervenors are grossly *misleading* the public by their insistence that the Constitutional Commission extended to the Judiciary the ban on presidential appointments

during the period stated in Section 15, Article VII. The deliberations that the dissent of Justice Carpio Morales quoted from the records of the Constitutional Commission did not concern either Section 15, Article VII or Section 4(1), Article VIII, but only Section 13, Article VII, a provision on nepotism. The records of the Constitutional Commission show that Commissioner Hilario G. Davide, Jr. had proposed to include judges and justices related to the President within the fourth civil degree of consanguinity or affinity among the persons whom the President might not appoint during his or her tenure. In the end, however, Commissioner Davide, Jr. withdrew the proposal to include the Judiciary in Section 13, Article VII "(t)o avoid any further complication," such that the final version of the second paragraph of Section 13, Article VII even completely omits any reference to the Judiciary.

4. ID.; ID.; ID.; INSISTENCE THAT THE APPOINTMENT BAN APPLIED TO THE JUDICIARY UNDER THE PRINCIPLE OF *VERBA LEGIS* IS SELF CONTRADICTION AT ITS WORST.— The movants take the majority to task for holding that Section 15, Article VII does not apply to appointments in the Judiciary. They aver that the Court either ignored or refused to apply many principles of statutory construction. The movants gravely err in their posture, and are themselves apparently contravening their avowed reliance on the principles of statutory construction. For one, the movants, disregarding the absence from Section 15, Article VII of the express extension of the ban on appointments to the Judiciary, insist that the ban applied to the Judiciary under the principle of *verba legis*. That is self-contradiction at its worst.

5. ID.; ID.; ID.; SECTION 4(1) AND SECTION 9 OF ARTICLE VIII SHOULD BE LEFT AS THEY ARE, GIVEN THAT THEIR MEANING IS CLEAR AND EXPLICIT, AND NO WORDS CAN BE INTERPOLATED IN THEM.— Another instance is the movants' unhesitating willingness to read into Section 4(1) and Section 9, both of Article VIII, the express applicability of the ban under Section 15, Article VII during the period provided therein, despite the silence of said provisions thereon. Yet, construction cannot supply the omission, for doing so would generally constitute an encroachment upon the field of the Constitutional Commission. Rather, Section 4(1) and Section 9 should be left as they are,

given that their meaning is clear and explicit, and no words can be interpolated in them. Interpolation of words is unnecessary, because the law is more than likely to fail to express the legislative intent with the interpolation. In other words, the addition of new words may alter the thought intended to be conveyed. And, even where the meaning of the law is clear and sensible, either with or without the omitted word or words, interpolation is improper, because the primary source of the legislative intent is in the language of the law itself. We cannot permit the meaning of the Constitution to be stretched to any unintended point in order to suit the purposes of any quarter.

6. ID.; ID.; ID.; JUDICIARY DEPARTMENT; MEMBERS OF THE COURT VOTE ON THE SOLE BASIS OF THEIR CONSCIENCE AND THE MERITS OF THE ISSUES; ANY CLAIM TO THE CONTRARY PROCEEDS FROM MALICE AND CONDESCENSION.— It has been insinuated as part of the polemics attendant to the controversy we are resolving that because all the Members of the present Court were appointed by the incumbent President, a majority of them are now granting to her the authority to appoint the successor of the retiring Chief Justice. The insinuation is misguided and utterly unfair. The Members of the Court vote on the sole basis of their conscience and the merits of the issues. Any claim to the contrary proceeds from malice and condescension. Neither the outgoing President nor the present Members of the Court had arranged the current situation to happen and to evolve as it has. None of the Members of the Court could have prevented the Members composing the Court when she assumed the Presidency about a decade ago from retiring during her prolonged term and tenure, for their retirements were mandatory. Yet, she is now left with an imperative duty under the Constitution to fill up the vacancies created by such inexorable retirements within 90 days from their occurrence. Her official duty she must comply with. So must we ours who are tasked by the Constitution to settle the controversy.

BRION, *J., concurring and dissenting opinion:*

1. POLITICAL LAW; JUDICIARY DEPARTMENT; POWER OF JUDICIAL REVIEW; BASIC REQUISITES OF JUSTICIABILITY; SINCE IT WAS NOT ALLEGED THAT

THE JUDICIAL AND BAR COUNCIL (JBC) WAS PERFORMING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS IT CANNOT BE THE SUBJECT OF A PETITION FOR *CERTIORARI*.— One marked difference between the Decision and my Separate Opinion is our approach on the basic requisites/justiciability issues. The Decision apparently glossed over this aspect of the case, while I fully explained why the De Castro and Peralta petitions should be dismissed outright. In my view, these petitions violated the most basic requirements of their chosen medium for review – a petition for *certiorari* and *mandamus* under Rule 65 of the Rules of Court. The petitions commonly failed to allege that the Judicial and Bar Council (*JBC*) performs judicial or quasi-judicial functions, an allegation that the petitions could not really make, since the JBC does not really undertake these functions and, for this reason, cannot be the subject of a petition for *certiorari*; hence, the petitions should be dismissed outright. They likewise failed to facially show any failure or refusal by the JBC to undertake a constitutional duty to justify the issuance of a writ of *mandamus;* they invoked judicial notice that we could not give because there was, and is, no JBC refusal to act. Thus, the *mandamus* aspects of these petitions should have also been dismissed outright. The *ponencia*, unfortunately, failed to fully discuss these legal infirmities.

2. ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY REQUIREMENT; THE INSTANT PETITION DOES NOT NEED THE ACTUAL CLASH OF INTERESTS OF THE TYPE THAT A JUDICIAL ADJUDICATION REQUIRES; ALL THAT MUST BE SHOWN IS THE ACTIVE NEED FOR SUPERVISION TO JUSTIFY THE COURT'S INTERVENTION.— I recognized in the Separate Opinion that, unlike in *Valenzuela* where an outright defiance of the election ban took place, no such obvious triggering event transpired in the Mendoza petition. Rather, the Mendoza petition looked to the supervisory power of the Court over judicial personnel and over the JBC as basis to secure a resolution of the election ban issue. The JBC, at that time, had indicated its intent to look up to the Court's supervisory power and role as the final interpreter of the Constitution to guide it in responding to the challenges it confronts. To me, this was "a point no less critical, *from the point of view of supervision*, than the appointment of the two judges during the election ban period in *Valenzuela*."

In making this conclusion, I pointed out in my Separate Opinion the unavoidable surrounding realities evident from the confluence of events, namely: (1) an election to be held on May 10, 2010; (2) the retirement of the Chief Justice on May 17, 2010; (3) the lapse of the terms of the elective officials from the President to the congressmen on June 30, 2010; (4) the delay before the Congress can organize and send its JBC representatives; and (5) the expiration of the term of a non-elective JBC member in July 2010. All these – juxtaposed with the Court's supervision over the JBC, the latter's need for guidance, and the existence of an actual controversy on the same issues bedeviling the JBC – in my view, were sufficient to save the Mendoza petition from being a mere request for opinion or a petition for declaratory relief that falls under the jurisdiction of the lower court. This recognition is beyond the level of what this Court can do in handling a moot and academic case – usually, one that no longer presents a judiciable controversy but one that can still be ruled upon at the discretion of the court when the constitutional issue is of paramount public interest and controlling principles are needed to guide the bench, the bar and the public. To be sure, this approach in recognizing when a petition is actionable is novel. An overriding reason for this approach can be traced to the nature of the petition, as *it rests on the Court's supervisory authority and relates to the exercise of the Court's administrative rather than its judicial functions* (other than these two functions, the Court also has its rulemaking function under Article VIII, Section 5(5) of the Constitution). Strictly speaking, the Mendoza petition calls for directions from the Court in the exercise of its power of supervision over the JBC, not on the basis of the power of judicial review. In this sense, it does not need the actual clash of interests ***of the type that a judicial adjudication requires***. All that must be shown is the active need for supervision to justify the Court's intervention as supervising authority.

3. ID.; ID.; ID.; SUFFICIENT LEGAL BASIS EXISTS TO ACTIVELY INVOKE THE COURT'S SUPERVISORY AUTHORITY GRANTED UNDER THE CONSTITUTION, NO LESS AS BASIS FOR ACTION.— The Court's recognition of the Mendoza petition was not an undue stretch of its constitutional powers. If the recognition is unusual at all, it is so only because of its novelty; to my knowledge, ***this is the***

first time ever in Philippine jurisprudence that the supervisory authority of the Court over an attached agency has been highlighted in this manner. Novelty, *per se*, however, is not a ground for objection nor a mark of infirmity for as long as the novel move is founded in law. In this case, as in the case of the writ of *amparo* and *habeas data* that were then novel and avowedly activist in character, sufficient legal basis exists to actively invoke the Court's supervisory authority – granted under the Constitution, no less – as basis for action.

4. ID.; ID.; ID.; SUPREME COURT'S SUPERVISORY AUTHORITY OVER THE JUDICIAL AND BAR COUNCIL EXEMPLIFIED.— To partly quote the wording of the Constitution, Article VIII, Section 8(1) and (5) provide that "*A Judicial and Bar Council is hereby created* ***under the supervision*** *of the Supreme Court… It may exercise such other functions and duties as the Supreme Court may assign to it*." Supervision, as a legal concept, more often than not, is defined in relation with the concept of control. In *Social Justice Society v. Atienza*, we defined "supervision" as follows: [Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter. Under this definition, the Court cannot dictate on the JBC the results of its assigned task, *i.e.*, who to recommend or what standards to use to determine who to recommend. It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to "*take such action or step as prescribed by law to make them perform their duties,*" if the duties are not being performed because of JBC's fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties – a power that suggests authority beyond what is purely supervisory.

5. ID.; ID.; ID.; THAT THE COURT DOES ITS SUPERVISORY AUTHORITY OVER THE JUDICIAL AND BAR COUNCIL

WHILE CONCRETELY RESOLVING ACTUAL CONTROVERSIES ON THE SAME ISSUE IMMEASURABLY STRENGTHENS THE INTRINSIC CORRECTNESS OF THE COURT'S ACTION.— Where the JBC itself is at a loss on how to proceed in light of disputed constitutional provisions that require interpretation, the Court is not legally out of line – as the final authority on the interpretation of the Constitution and as the entity constitutionally-tasked to supervise the JBC – in exercising its oversight function by clarifying the interpretation of the disputed constitutional provision to guide the JBC. In doing this, the Court is not simply rendering a general legal advisory; it is providing concrete and specific legal guidance to the JBC in the exercise of its supervisory authority, after the latter has asked for assistance in this regard. That the Court does this while concretely resolving actual controversies (the Tolentino and Soriano petitions) on the same issue immeasurably strengthens the intrinsic correctness of the Court's action.

6. ID.; ID.; ID.; THERE IS NO CONFLICT, IN TERMS OF THE AUTHORITY TO APPOINT, BETWEEN THE EXECUTIVE AND JUDICIARY; THE PRESIDENT RETAINS FULL POWERS TO APPOINT MEMBERS OF THE COURT DURING THE ELECTION PERIOD, AND THE JUDICIARY IS ASSURED OF A FULL MEMBERSHIP WITHIN THE TIME FRAME GIVEN.— In considering the interests of the Executive and the Judiciary, a holistic approach starts from the premise that the constitutional scheme is to grant the President the power of appointment, subject to the limitation provided under Article VII, Section 15. At the same time, the Judiciary is assured, without qualifications under Article VIII, Section 4(1), of the immediate appointment of Members of the Supreme Court, *i.e.*, within 90 days from the occurrence of the vacancy. *If both provisions would be allowed to take effect, **as I believe they should**, the limitation on the appointment power of the President under Article VII, Section 15 should itself be limited by the appointment of Members of the Court pursuant to Article VIII, Section 4(1), so that the provision applicable to the Judiciary can be given full effect without detriment to the President's appointing authority.* This harmonization will result in restoring to the President the full authority to appoint Members of the Supreme Court pursuant to the combined operation of Article VII,

Section 15 and Article VIII, Section 4(1). Viewed in this light, there is essentially no conflict, in terms of the authority to appoint, between the Executive and Judiciary; the President would effectively be allowed to exercise the Executive's traditional presidential power of appointment while respecting the Judiciary's own prerogative. In other words, the President retains full powers to appoint Members of the Court during the election period, and the Judiciary is assured of a full membership within the time frame given.

7. ID.; ID.; ID.; THE APPOINTMENT OF A MEMBER OF THE COURT EVEN DURING THE ELECTION *PER SE* IMPLIES NO ADVERSE EFFECT ON THE INTEGRITY OF THE ELECTION; A FULL COURT IS IDEAL DURING THIS PERIOD IN LIGHT OF THE COURT'S UNIQUE ROLE DURING ELECTIONS.— In my Separate Opinion, I concluded that the appointment of a Member of the Court even during the election period *per se* implies no adverse effect on the integrity of the election; a full Court is ideal during this period in light of the Court's unique role during elections. I maintain this view and fully concur in this regard with the majority. During the election period, the court is not only the interpreter of the Constitution and the election laws; other than the Commission on Elections and the lower courts to a limited extent, the Court is likewise the highest impartial recourse available to decisively address any problem or dispute arising from the election. It is the leader and the highest court in the Judiciary, the only one of the three departments of government directly unaffected by the election. The Court is likewise the entity entrusted by the Constitution, no less, with the gravest election-related responsibilities. In particular, it is the sole judge of all contests in the election of the President and the Vice-President, with leadership and participation as well in the election tribunals that directly address Senate and House of Representatives electoral disputes. With this grant of responsibilities, the Constitution itself has spoken on the trust it reposes on the Court on election matters. This reposed trust, to my mind, renders academic any question of whether an appointment during the election period will adversely affect the integrity of the elections – it will not, as the maintenance of a full Court in fact contributes to the enforcement of the constitutional scheme to foster a free and orderly election.

8. ID.; ID.; ID.; ONLY THE JUDICIARY OF THE THREE GREAT DEPARTMENTS OF GOVERNMENT STANDS UNAFFECTED BY THE ELECTION AND SHOULD AT LEAST THEREFORE BE COMPLETE TO ENABLE IT TO DISCHARGE ITS CONSTITUTIONAL ROLE TO ITS FULLEST POTENTIAL AND CAPACITY.— As I intimated in my Separate Opinion, the imputation of distrust can be made against any appointing authority, whether outgoing or incoming. The incoming President himself will be before this Court if an election contest arises; any President, past or future, would also naturally wish favorable outcomes in legal problems that the Court would resolve. These possibilities and the potential for continuing influence in the Court, however, cannot be active considerations in resolving the election ban issue as they are, in their present form and presentation, all speculative. If past record is to be the measure, the record of past Chief Justices and of this Court speaks for itself with respect to the Justices' relationship with, and deferral to, the appointing authority in their decisions. What should not be forgotten in examining the records of the Court, from the prism of problems an electoral exercise may bring, is the Court's unique and proven capacity to intervene and diffuse situations that are potentially explosive for the nation. EDSA II particularly comes to mind in this regard (although it was an event that was not rooted in election problems) as it is a perfect example of the potential for damage to the nation that the Court can address *and has addressed*. When acting in this role, a vacancy in the Court is not only a vote less, but a significant contribution less in the Court's deliberations and capacity for action, especially if the missing voice is the voice of the Chief Justice. Be it remembered that if any EDSA-type situation arises in the coming elections, it will be compounded by the lack of leaders because of the lapse of the President's term by June 30, 2010; by a possible failure of succession if for some reason the election of the new leadership becomes problematic; and by the similar absence of congressional leadership because Congress has not yet convened to organize itself. In this scenario, only the Judiciary of the three great departments of government stands unaffected by the election and should at least therefore be complete to enable it to discharge its constitutional role to its fullest potential and capacity. To state the obvious, leaving the Judiciary without any permanent leader in this scenario may immeasurably

complicate the problem, as all three departments of government will then be leaderless.

9. ID.; ID.; ID.; THE ABSENCE OF A CHIEF JUSTICE WILL MAKE A LOT OF DIFFERENCE IN THE EFFECTIVENESS OF THE COURT AS HE OR SHE HEADS THE JUDICIARY, SITS AS CHAIR OF THE JUDICIAL AND BAR COUNCIL AND OF THE PRESIDENTIAL ELECTORAL TRIBUNAL, PRESIDES OVER IMPEACHMENT PROCEEDINGS, AND PROVIDES MORAL SUASION AND LEADERSHIP THAT ONLY THE PERMANENT MANTLE OF CHIEF JUSTICE CAN BESTOW.— To stress what I mentioned on this point in my Separate Opinion, the absence of a Chief Justice will make a lot of difference in the effectiveness of the Court as he or she heads the Judiciary, sits as Chair of the JBC and of the Presidential Electoral Tribunal, presides over impeachment proceedings, and provides the moral suasion and leadership that only the permanent mantle of the Chief Justice can bestow. EDSA II is just one of the many lessons from the past when the weightiest of issues were tackled and promptly resolved by the Court. Unseen by the general public in all these was the leadership that was there to ensure that the Court would act as one, in the spirit of harmony and stability although divergent in their individual views, as the Justices individually make their contributions to the collegial result. To some, this leadership may only be symbolic, as the Court has fully functioned in the past even with an incomplete membership or under an Acting Chief Justice. But as I said before, an incomplete Court "is not a whole Supreme Court; it will only be a Court with 14 members who would act and vote on all matters before it."

10. ID.; ID.; ID.; REVERSAL OF *VALENZUELA* IS OUT OF PLACE IN THE PRESENT CASE; REASONS.— The *ponencia's* ruling reversing *Valenzuela,* in my view, is out of place in the present case, since at issue here is the appointment of the Chief Justice during the period of the election ban, not the appointment of lower court judges that *Valenzuela* resolved. To be perfectly clear, the conflict in the constitutional provisions is not confined to Article VII, Section 15 and Article VIII, Section 4(1) with respect to the appointment of Members of the Supreme Court; even before the *Valenzuela* ruling, the conflict already existed between Article VII, Section 15 and

Article VIII, Section 9 – the provision on the appointment of the justices and judges of courts lower than the Supreme Court. After this Court's ruling in *Valenzuela*, no amount of hairsplitting can result in the conclusion that Article VII, Section 15 applied the election ban *over the whole Judiciary, including the Supreme Court*, as the facts and the *fallo* of *Valenzuela* plainly spoke of the objectionable appointment of two Regional Trial Court judges. To reiterate, *Valenzuela* only resolved the conflict between Article VII, Section 15 and appointments to the Judiciary under Article VIII, **Section 9**.

11. ID.; ID.; ID.; RULING IN *VALENZUELA* IS AN *OBITER DICTUM* AND, AS SUCH, IT CAN NOT BE CITED FOR ITS PRIMARY PRECEDENTIAL VALUE.— If *Valenzuela* did prominently figure at all in the present case, the prominence can be attributed to the petitioners' mistaken reading that this case is *primary authority* for the dictum that Article VII, Section 15 completely bans all appointments to the Judiciary, including appointments to the Supreme Court, during the election period up to the end of the incumbent President's term. In reality, this mistaken reading is an *obiter dictum* in Valenzuela, and hence, cannot be cited for its primary precedential value. This legal situation still holds true as *Valenzuela* was not doctrinally reversed as its proposed reversal was supported only by five (5) out of the 12 participating Members of the Court. In other words, this ruling on how Article VII, Section 15 is to be interpreted in relation with Article VIII, Section 9, should continue to stand unless otherwise expressly reversed by this Court. But separately from the mistaken use of an *obiter* ruling as primary authority, I believe that I should sound the alarm bell about the *Valenzuela* ruling in light of a recent vacancy in the position of Presiding Justice of the Sandiganbayan resulting from Presiding Justice Norberto Geraldez' death soon after we issued the decision in the present case. Reversing the *Valenzuela* ruling now, *in the absence of a properly filed case addressing an appointment at this time to the Sandiganbayan or to any other vacancy in the lower courts*, will be ***an irregular ruling of the first magnitude*** by this Court, as it will effectively be a shortcut that lifts the election ban on appointments to the lower courts without the benefit of a case whose facts and arguments would directly confront the continued validity of the *Valenzuela* ruling. This is

especially so after we have placed the Court on notice that a reversal of *Valenzuela* is uncalled for because its ruling is not the litigated issue in this case.

12. ID.; ID.; ID.; THE "MIDNIGHT APPOINTMENT" JUSTIFICATION WHILE FULLY APPLICABLE TO THE LOWER ECHELONS OF THE JUDICIARY SHOULD NOT APPLY TO THE SUPREME COURT WHICH HAS ONLY 15 POSITIONS THAT ARE NOT EVEN VACATED AT THE SAME TIME.— Let me repeat what I stressed in my Separate Opinion about *Valenzuela* which rests on the reasoning that the evils Section 15 seeks to remedy – vote buying, midnight appointments and partisan reasons to influence the elections – exist, thus justifying an election appointment ban. In particular, the "midnight appointment" justification, while fully applicable to the more numerous vacancies at the lower echelons of the Judiciary (*with an alleged current lower court vacancy level of 537 or a 24.5% vacancy rate*), should not apply to the Supreme Court which has only a total of 15 positions that are not even vacated at the same time. The most number of vacancies for any one year occurred only last year (2009) when seven (7) positions were vacated by retirement, but this vacancy rate is not expected to be replicated at any time within the next decade. Thus "midnight appointments" to the extent that they were understood in *Aytona* will not occur in the vacancies of this Court as nominations to its vacancies are all processed through the JBC under the public's close scrutiny. As already discussed above, the institutional integrity of the Court is hardly an issue. If at all, only objections personal to the individual Members of the Court or against the individual applicants can be made, but these are matters addressed in the first place by the JBC before nominees are submitted. There, too, are specific reasons, likewise discussed above, explaining why the election ban should not apply to the Supreme Court. These exempting reasons, of course, have yet to be shown to apply to the lower courts. Thus, on the whole, the reasons justifying the election ban in *Valenzuela* still obtain in so far as the lower courts are concerned, and have yet to be proven otherwise in a properly filed case. Until then, *Valenzuela*, ***except to the extent that it mentioned Section 4(1)***, should remain an authoritative ruling of this Court.

CARPIO MORALES, *J., dissenting opinion:*

1. POLITICAL LAW; JUDICIARY DEPARTMENT; THE COURT MUST ADHERE TO THE LAW; OTHERWISE IT TAKES THE RISK OF REEKING OF AN OBJECTIONABLE AIR OF SUPREME JUDICIAL ARROGANCE.— No compelling reason exists for the Court to deny a reconsideration of the assailed Decision. The various motions for reconsideration raise hollering substantial arguments and legitimately nagging questions which the Court must meet head on. If this Court is to deserve or preserve its revered place not just in the hierarchy but also in history, passion for reason demands the issuance of an extended and extensive resolution that confronts the ramifications and repercussions of its assailed Decision. Only then can it offer an illumination that any self-respecting student of the law clamors and any adherent of the law deserves. Otherwise, it takes the risk of reeking of an objectionable air of supreme judicial arrogance.

2. ID.; ID.; ID.; THE COURT'S DECISION DISREGARDED ESTABLISHED CANONS OF STATUTORY CONSTRUCTION; THE DECISION PLACED PREMIUM ON THE ARRANGEMENT AND ORDERING OF PROVISIONS, ONE OF THE WEAKEST TOOLS OF CONSTRUCTION.— In interpreting the subject constitutional provisions, the Decision disregarded established canons of statutory construction. Without explaining the inapplicability of each of the relevant rules, the Decision immediately placed premium on the arrangement and ordering of provisions, one of the weakest tools of construction, to arrive at its conclusion. In reversing *Valenzuela*, the Decision held that the *Valenzuela* dictum did not firmly rest on ConCom deliberations, yet it did not offer to cite a material ConCom deliberation. It instead opted to rely on the *memory* of Justice Florenz Regalado which incidentally mentioned only the "Court of Appeals." The Decision's conclusion must rest on the strength of its own favorable Concom deliberation, none of which to date has been cited. Instead of choosing which constitutional provision carves out an exception from the other provision, the most legally feasible interpretation (in the limited cases of temporary physical or legal impossibility of compliance, as expounded in my Dissenting Opinion) is to consider the appointments

ban or other substantial obstacle as a temporary impossibility which excuses or releases the constitutional obligation of the Office of the President for the duration of the ban or obstacle.

3. ID.; ID.; EXECUTIVE DEPARTMENT; APPOINTMENT BAN; IN VIEW OF THE TEMPORARY NATURE OF THE CIRCUMSTANCE CAUSING THE IMPOSSIBILITY OF PERFORMANCE, THE OUTGOING PRESIDENT IS RELEASED FROM NON-FULFILLMENT OF THE OBLIGATION TO APPOINT, AND THE DUTY DEVOLVES UPON THE NEW PRESIDENT.— In view of the temporary nature of the circumstance causing the impossibility of performance, the outgoing President is released from non-fulfillment of the obligation to appoint, and the duty devolves upon the new President. The delay in the fulfillment of the obligation becomes excusable, since the law cannot exact compliance with what is impossible. The 90-day period within which to appoint a member of the Court is thus suspended and the period could only start or resume to run when the temporary obstacle disappears (*i.e.*, after the period of the appointments ban; when there is already a quorum in the JBC; or when there is already at least three applicants).

4. ID.; ID.; ID.; ID.; TO REQUIRE THE JUDICIAL AND BAR COUNCIL TO SUBMIT TO THE PRESIDENT A SHORTLIST OF NOMINEES ON OR BEFORE THE OCCURENCE OF A VACANCY IN THE COURT LEADS TO PREPOSTEROUS RESULTS AND EVEN ABSURDITY.— The ruling in the Decision that obligates the JBC to submit the shortlist to the President on or before the occurrence of the vacancy in the Court runs counter to the Concom deliberations which explain that the 90-day period is allotted for *both* the nomination by the JBC and the appointment by the President. In the move to increase the period to 90 days, Commissioner Romulo stated that "[t]he sense of the Committee is that 60 days is awfully short and that the [Judicial and Bar] Council, as well as the President, may have difficulties with that." To require the JBC to submit to the President a shortlist of nominees on or before the occurrence of vacancy in the Court leads to preposterous results. It bears reiterating that the requirement is absurd when, *inter alia*, the vacancy is occasioned by the death of a member of the Court, in which

case the JBC could never anticipate the death of a Justice, and could never submit a list to the President on or before the occurrence of vacancy.

5. ID.; ID.; ID.; ID.; THE PRACTICE OF HAVING AN ACTING CHIEF JUSTICE IN THE INTERREGNUM IS PROVIDED BY LAW, CONFIRMED BY TRADITION, AND SETTLED BY JURISPRUDENCE TO BE AN INTERNAL MATTER.— The express allowance in the Constitution of a 90-day period of vacancy in the membership of the Court rebuts any public policy argument on avoiding a vacuum of even a single day without a duly appointed Chief Justice. Moreover, as pointed out in my Dissenting Opinion, the practice of having an acting Chief Justice in the interregnum is provided for by law, confirmed by tradition, and settled by jurisprudence to be an internal matter.

APPEARANCES OF COUNSEL

Saklolo A. Leaño, Rita Linda V. Jimeno and *Rico A. Limpingco* for petitioner in G.R. No. 191420.

Arturo M. De Castro for and in his behalf.

Jaime N. Soriano, CPA, MNSA for and in his behalf.

Manuel M. Lazaro, et al. for petitioner in G.R. No. 191057.

Benjamin P. Lozada III, et al. for movant-intervenor Marlon B. Ubano.

Pitero M. Reig for oppositor-in-intervention Board of the Integrated Bar of the Philippines-Pasay, Parañaque, Las Piñas & Muntinlupa Chapters.

Edre U. Olalia, et al. for oppositor-intevenor National Union of People's Lawyers.

Al A. Parreño for movant oppositors-in-intervention.

Ibarra M. Gutierrez III for oppositor-intervenors Walden F. Bello & Loretta Ann P. Rosales.

Kapunan Tamano Javier and Associates for intervenors A. Tamano, Liza Maza, Satur Ocampo, Susan Ople, Gilbert Remulla and Gwendolyn Pimentel.

Gana Manlangit and Perez Law Office for intervenor Aquilino Q. Pimentel, Sr.

R E S O L U T I O N

BERSAMIN, *J.*:

On March 17, 2010, the Court promulgated its decision, holding:

WHEREFORE, the Court:

1. Dismisses the petitions for *certiorari* and *mandamus* in G.R. No. 191002 and G.R. No. 191149, and the petition for *mandamus* in G.R. No. 191057 for being premature;

2. Dismisses the petitions for prohibition in G.R. No. 191032 and G.R. No. 191342 for lack of merit; and

3. Grants the petition in A.M. No. 10-2-5-SC and, accordingly, directs the Judicial and Bar Council:

(*a*) To resume its proceedings for the nomination of candidates to fill the vacancy to be created by the compulsory retirement of Chief Justice Reynato S. Puno by May 17, 2010;

(*b*) To prepare the short list of nominees for the position of Chief Justice;

(*c*) To submit to the incumbent President the short list of nominees for the position of Chief Justice on or before May 17, 2010; and

(*d*) To continue its proceedings for the nomination of candidates to fill other vacancies in the Judiciary and submit to the President the short list of nominees corresponding thereto in accordance with this decision.

SO ORDERED.

MOTIONS FOR RECONSIDERATION

Petitioners Jaime N. Soriano (G.R. No. 191032), Amador Z. Tolentino and Roland B. Inting (G.R. No. 191342), and Philippine Bar Association (G.R. No. 191420), as well as intervenors Integrated Bar of the Philippines-Davao del Sur (IBP-Davao del Sur, *et al.*); Christian Robert S. Lim; Peter Irving Corvera; Bagong Alyansang Bayan and others (BAYAN, *et al.*); Alfonso V. Tan, Jr.; the Women Trial Lawyers Organization of the

Philippines (WTLOP); Marlou B. Ubano; Mitchell John L. Boiser; and Walden F. Bello and Loretta Ann P. Rosales (Bello, *et al.*), filed their respective motions for reconsideration. Also filing a motion for reconsideration was Senator Aquilino Q. Pimentel, Jr., whose belated intervention was allowed.

We summarize the arguments and submissions of the various motions for reconsideration, in the aforegiven order:

Soriano

1. The Court has not squarely ruled upon or addressed the issue of whether or not the power to designate the Chief Justice belonged to the Supreme Court *en banc*.
2. The *Mendoza* petition should have been dismissed, because it sought a mere declaratory judgment and did not involve a justiciable controversy.
3. All Justices of the Court should participate in the next deliberations. The mere fact that the Chief Justice sits as *ex officio* head of the JBC should not prevail over the more compelling state interest for him to participate as a Member of the Court.

Tolentino and Inting

1. A plain reading of Section 15, Article VII does not lead to an interpretation that exempts judicial appointments from the express ban on midnight appointments.
2. In excluding the Judiciary from the ban, the Court has made distinctions and has created exemptions when none exists.
3. The ban on midnight appointments is placed in Article VII, not in Article VIII, because it limits an executive, not a judicial, power.
4. Resort to the deliberations of the Constitutional Commission is superfluous, and is powerless to vary the terms of the clear prohibition.
5. The Court has given too much credit to the position taken by Justice Regalado. Thereby, the Court has raised the Constitution to the level of a venerated text whose intent

can only be divined by its framers as to be outside the realm of understanding by the sovereign people that ratified it.

6. *Valenzuela* should not be reversed.

7. The petitioners, as taxpayers and lawyers, have the clear legal standing to question the illegal composition of the JBC.

Philippine Bar Association

1. The Court's strained interpretation of the Constitution violates the basic principle that the Court should not formulate a rule of constitutional law broader than what is required by the precise facts of the case.

2. Considering that Section 15, Article VII is clear and straightforward, the only duty of the Court is to apply it. The provision expressly and clearly provides a general limitation on the appointing power of the President in prohibiting the appointment of any person to any position in the Government without any qualification and distinction.

3. The Court gravely erred in unilaterally ignoring the constitutional safeguard against midnight appointments.

4. The Constitution has installed two constitutional safeguards: — the prohibition against midnight appointments, and the creation of the JBC. It is not within the authority of the Court to prefer one over the other, for the Court's duty is to apply the safeguards as they are, not as the Court likes them to be.

5. The Court has erred in failing to apply the basic principles of statutory construction in interpreting the Constitution.

6. The Court has erred in relying heavily on the title, chapter or section headings, despite precedents on statutory construction holding that such headings carried very little weight.

7. The Constitution has provided a general rule on midnight appointments, and the only exception is that on temporary appointments to executive positions.

8. The Court has erred in directing the JBC to resume the proceedings for the nomination of the candidates to fill the

vacancy to be created by the compulsory retirement of Chief Justice Puno with a view to submitting the list of nominees for Chief Justice to President Arroyo on or before May 17, 2010. The Constitution grants the Court only the power of supervision over the JBC; hence, the Court cannot tell the JBC what to do, how to do it, or when to do it, especially in the absence of a real and justiciable case assailing any specific action or inaction of the JBC.

9. The Court has engaged in rendering an advisory opinion and has indulged in speculations.

10. The constitutional ban on appointments being already in effect, the Court's directing the JBC to comply with the decision constitutes a culpable violation of the Constitution and the commission of an election offense.

11. The Court cannot reverse on the basis of a secondary authority a doctrine unanimously formulated by the Court *en banc*.

12. The practice has been for the most senior Justice to act as Chief Justice whenever the incumbent is indisposed. Thus, the appointment of the successor Chief Justice is not urgently necessary.

13. The principal purpose for the ban on midnight appointments is to arrest any attempt to prolong the outgoing President's powers by means of proxies. The attempt of the incumbent President to appoint the next Chief Justice is undeniably intended to perpetuate her power beyond her term of office.

IBP-Davao del Sur, *et al.*

1. Its language being unambiguous, Section 15, Article VII of the Constitution applies to appointments to the Judiciary. Hence, no cogent reason exists to warrant the reversal of the *Valenzuela* pronouncement.

2. Section 16, Article VII of the Constitution provides for presidential appointments to the Constitutional Commissions and the JBC with the consent of the Commission on Appointments. Its phrase "other officers whose appointments are vested in him in this Constitution" is enough proof that the limitation on the appointing power of the President extends to appointments to the Judiciary. Thus, Section 14,

Section 15, and Section 16 of Article VII apply to all presidential appointments in the Executive and Judicial Branches of the Government.

3. There is no evidence that the framers of the Constitution abhorred the idea of an *Acting* Chief Justice in all cases.

Lim

1. There is no justiciable controversy that warrants the Court's exercise of judicial review.

2. The election ban under Section 15, Article VII applies to appointments to fill a vacancy in the Court and to other appointments to the Judiciary.

3. The creation of the JBC does not justify the removal of the safeguard under Section 15 of Article VII against midnight appointments in the Judiciary.

Corvera

1. The Court's exclusion of appointments to the Judiciary from the Constitutional ban on midnight appointments is based on an interpretation beyond the plain and unequivocal language of the Constitution.

2. The intent of the ban on midnight appointments is to cover appointments in both the Executive and Judicial Departments. The application of the principle of *verba legis* (ordinary meaning) would have obviated dwelling on the organization and arrangement of the provisions of the Constitution. If there is any ambiguity in Section 15, Article VII, the intent behind the provision, which is to prevent political partisanship in all branches of the Government, should have controlled.

3. A plain reading is preferred to a contorted and strained interpretation based on compartmentalization and physical arrangement, especially considering that the Constitution must be interpreted as a whole.

4. Resort to the deliberations or to the personal interpretation of the framers of the Constitution should yield to the plain and unequivocal language of the Constitution.

5. There is no sufficient reason for reversing *Valenzuela,* a ruling that is reasonable and in accord with the Constitution.

BAYAN, *et al.*

1. The Court erred in granting the petition in A.M. No. 10-2-5-SC, because the petition did not present a justiciable controversy. The issues it raised were not yet ripe for adjudication, considering that the office of the Chief Justice was not yet vacant and that the JBC itself has yet to decide whether or not to submit a list of nominees to the President.

2. The collective wisdom of *Valenzuela* Court is more important and compelling than the opinion of Justice Regalado.

3. In ruling that Section 15, Article VII is in conflict with Section 4(1), Article VIII, the Court has violated the principle of *ut magis valeat quam pereat* (which mandates that the Constitution should be interpreted as a whole, such that any conflicting provisions are to be harmonized as to fully give effect to all). There is no conflict between the provisions; they complement each other.

4. The form and structure of the Constitution's titles, chapters, sections, and draftsmanship carry little weight in statutory construction. The clear and plain language of Section 15, Article VII precludes interpretation.

Tan, Jr.

1. The factual antecedents do not present an actual case or controversy. The clash of legal rights and interests in the present case are merely anticipated. Even if it is anticipated with certainty, no actual vacancy in the position of the Chief Justice has yet occurred.

2. The ruling that Section 15, Article VII does not apply to a vacancy in the Court and the Judiciary runs in conflict with long standing principles and doctrines of statutory construction. The provision admits only one exception, temporary appointments in the Executive Department. Thus, the Court should not distinguish, because the law itself makes no distinction.

3. *Valenzuela* was erroneously reversed. The framers of the Constitution clearly intended the ban on midnight

appointments to cover the members of the Judiciary. Hence, giving more weight to the opinion of Justice Regalado to reverse the *en banc* decision in *Valenzuela* was unwarranted.

4. Section 15, Article VII is not incompatible with Section 4(1), Article VIII. The 90-day mandate to fill any vacancy lasts until August 15, 2010, or a month and a half after the end of the ban. The next President has roughly the same time of 45 days as the incumbent President (*i.e.*, 44 days) within which to scrutinize and study the qualifications of the next Chief Justice. Thus, the JBC has more than enough opportunity to examine the nominees without haste and political uncertainty.

5. When the constitutional ban is in place, the 90-day period under Section 4(1), Article VIII is suspended.

6. There is no basis to direct the JBC to submit the list of nominees on or before May 17, 2010. The directive to the JBC sanctions a culpable violation of the Constitution and constitutes an election offense.

7. There is no pressing necessity for the appointment of a Chief Justice, because the Court sits *en banc*, even when it acts as the sole judge of all contests relative to the election, returns and qualifications of the President and Vice-President. Fourteen other Members of the Court can validly comprise the Presidential Electoral Tribunal.

WTLOP

1. The Court exceeded its jurisdiction in ordering the JBC to submit the list of nominees for Chief Justice to the President on or before May 17, 2010, and to continue its proceedings for the nomination of the candidates, because it granted a relief not prayed for; imposed on the JBC a deadline not provided by law or the Constitution; exercised control instead of mere supervision over the JBC; and lacked sufficient votes to reverse *Valenzuela*.

2. In interpreting Section 15, Article VII, the Court has ignored the basic principle of statutory construction to the effect that the literal meaning of the law must be applied when it is clear and unambiguous; and that we should not distinguish where the law does not distinguish.

3. There is no urgency to appoint the next Chief Justice, considering that the Judiciary Act of 1948 already provides that the power and duties of the office devolve on the most senior Associate Justice in case of a vacancy in the office of the Chief Justice.

Ubano

1. The language of Section 15, Article VII, being clear and unequivocal, needs no interpretation.
2. The Constitution must be construed in its entirety, not by resort to the organization and arrangement of its provisions.
3. The opinion of Justice Regalado is irrelevant, because Section 15, Article VII and the pertinent records of the Constitutional Commission are clear and unambiguous.
4. The Court has erred in ordering the JBC to submit the list of nominees to the President by May 17, 2010 *at the latest*, because no specific law requires the JBC to submit the list of nominees even before the vacancy has occurred.

Boiser

1. Under Section 15, Article VII, the only exemption from the ban on midnight appointments is the temporary appointment to an executive position. The limitation is in keeping with the clear intent of the framers of the Constitution to place a restriction on the power of the outgoing Chief Executive to make appointments.
2. To exempt the appointment of the next Chief Justice from the ban on midnight appointments makes the appointee beholden to the outgoing Chief Executive, and compromises the independence of the Chief Justice by having the outgoing President be continually influential.
3. The Court's reversal of *Valenzuela* without stating the sufficient reason violates the principle of *stare decisis*.

Bello, *et al.*

1. Section 15, Article VII does not distinguish as to the type of appointments an outgoing President is prohibited from making within the prescribed period. Plain textual reading

and the records of the Constitutional Commission support the view that the ban on midnight appointments extends to judicial appointments.

2. Supervision of the JBC by the Court involves oversight. The subordinate subject to oversight must first act not in accord with prescribed rules before the act can be redone to conform to the prescribed rules.

3. The Court erred in granting the petition in A.M. No. 10-2-5-SC, because the petition did not present a justiciable controversy.

Pimentel

1. Any constitutional interpretative changes must be reasonable, rational, and conformable to the general intent of the Constitution as a limitation to the powers of Government and as a bastion for the protection of the rights of the people. Thus, in harmonizing seemingly conflicting provisions of the Constitution, the interpretation should always be one that protects the citizenry from an ever expanding grant of authority to its representatives.

2. The decision expands the constitutional powers of the President in a manner totally repugnant to republican constitutional democracy, and is tantamount to a judicial amendment of the Constitution without proper authority.

COMMENTS

The Office of the Solicitor General (OSG) and the JBC separately represent in their respective comments, thus:

OSG

1. The JBC may be compelled to submit to the President a short list of its nominees for the position of Chief Justice.

2. The incumbent President has the power to appoint the next Chief Justice.

3. Section 15, Article VII does not apply to the Judiciary.

4. The principles of constitutional construction favor the exemption of the Judiciary from the ban on midnight appointments.

5. The Court has the duty to consider and resolve all issues raised by the parties as well as other related matters.

JBC

1. The consolidated petitions should have been dismissed for prematurity, because the JBC has not yet decided at the time the petitions were filed whether the incumbent President has the power to appoint the new Chief Justice, and because the JBC, having yet to interview the candidates, has not submitted a short list to the President.

2. The statement in the decision that there is a doubt on whether a JBC short list is necessary for the President to appoint a Chief Justice should be struck down as bereft of constitutional and legal basis. The statement undermines the independence of the JBC.

3. The JBC will abide by the final decision of the Court, but in accord with its constitutional mandate and its implementing rules and regulations.

For his part, petitioner Estelito P. Mendoza (A.M. No. 10-2-5-SC) submits his comment even if the OSG and the JBC were the only ones the Court has required to do so. He states that the motions for reconsideration were directed at the administrative matter he initiated and which the Court resolved. His comment asserts:

1. The grounds of the motions for reconsideration were already resolved by the decision and the separate opinion.

2. The administrative matter he brought invoked the Court's power of supervision over the JBC as provided by Section 8(1), Article VIII of the Constitution, as distinguished from the Court's adjudicatory power under Section 1, Article VIII. In the former, the requisites for judicial review are not required, which was why *Valenzuela* was docketed as an administrative matter. Considering that the JBC itself has yet to take a position on when to submit the short list to the proper appointing authority, it has effectively solicited the exercise by the Court of its power of supervision over the JBC.

3. To apply Section 15, Article VII to Section 4(1) and Section 9, Article VIII is to amend the Constitution.

4. The portions of the deliberations of the Constitutional Commission quoted in the dissent of Justice Carpio Morales, as well as in some of the motions for reconsideration do not refer to either Section 15, Article VII or Section 4(1), Article VIII, but to Section 13, Article VII (on nepotism).

RULING

We deny the motions for reconsideration for lack of merit, for all the matters being thereby raised and argued, not being new, have all been resolved by the decision of March 17, 2010.

Nonetheless, the Court opts to dwell on some matters only for the purpose of clarification and emphasis.

First: Most of the movants contend that the principle of *stare decisis* is controlling, and accordingly insist that the Court has erred in disobeying or abandoning *Valenzuela.*[1]

The contention has no basis.

Stare decisis derives its name from the Latin maxim *stare decisis et non quieta movere*, *i.e.*, to adhere to precedent and not to unsettle things that are settled. It simply means that a principle underlying the decision in one case is deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority. The decisions relied upon as precedents are commonly those of appellate courts, because the decisions of the trial courts may be appealed to higher courts and for that reason are probably not the best evidence of the rules of law laid down.[2]

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[1] *In Re Appointments Dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City, respectively,* A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408.

[2] Price & Bitner, *Effective Legal Research*, Little, Brown & Co., New York (1962), § 9.7.

Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[3] In a hierarchical judicial system like ours, the decisions of the higher courts bind the lower courts, but the courts of co-ordinate authority do not bind each other. The one highest court does not bind itself, being invested with the innate authority to rule according to its best lights.[4]

The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.[5] The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament.[6] But ours is not

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[3] *Caltex (Phil.), Inc. v. Palomar*, No. L-19650, September 29, 1966, 18 SCRA 247.

[4] *E.g.*, Dias, *Jurisprudence*, Butterworths, London, 1985, Fifth Edition, p. 127.

[5] *Limketkai Sons Milling, Inc. v. Court of Appeals*, G.R. No. 118509, September 5, 1996, 261 SCRA 464.

[6] See Calabresi, *A Common Law for the Age of Statutes*, Harvard University Press, p. 4 (1982) and endnote 12 of the page, which essentially recounts that the strict application of the doctrine of *stare decisis* is true only in a common-law jurisdiction like England (citing Wise, *The Doctrine of Stare Decisis*, 21 Wayne Law Review, 1043, 1046-1047 (1975)). Calabresi recalls that the English House of Lords decided in 1898 (*London Tramways Co. v. London County Council*, A.C. 375) that they could not alter precedents laid down by the House of Lords acting as the supreme court in previous cases, but that such precedents could only be altered by an Act of Parliament, for to do otherwise would mean that the courts would usurp legislative function; he mentions that in 1966, Lord Chancellor Gardiner announced in a *Practice Statement* a kind of general memorandum from the court that while: "Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law," they "nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their

a common-law system; hence, judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision *may be* followed as a precedent in a subsequent case only when its reasoning and justification are relevant, and the court in the latter case accepts such reasoning and justification to be applicable to the case. The application of the precedent is for the sake of convenience and stability.

For the intervenors to insist that *Valenzuela* ought not to be disobeyed, or abandoned, or reversed, and that its wisdom should guide, if not control, the Court in this case is, therefore, devoid of rationality and foundation. They seem to conveniently forget that the Constitution itself recognizes the innate authority of the Court *en banc* to modify or reverse a doctrine or principle of law laid down in any decision rendered *en banc* or in division.[7]

Second: Some intervenors are grossly *misleading* the public by their insistence that the Constitutional Commission extended to the Judiciary the ban on presidential appointments during the period stated in Section 15, Article VII.

The deliberations that the dissent of Justice Carpio Morales quoted from the records of the Constitutional Commission did not concern either Section 15, Article VII or Section 4(1), Article VIII, but only Section 13, Article VII, a provision on nepotism. The records of the Constitutional Commission show that

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present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so." (Calabresi cites Leach, *Revisionism in the House of Lords: The Bastion of Rigid Stare Decisis Falls*, 80 Harvard Law Review, 797 (1967).

[7] Section 4 (2), Article VIII, provides:

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(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*; **Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.**

Commissioner Hilario G. Davide, Jr. had proposed to include judges and justices related to the President within the fourth civil degree of consanguinity or affinity among the persons whom the President might not appoint during his or her tenure. In the end, however, Commissioner Davide, Jr. withdrew the proposal to include the Judiciary in Section 13, Article VII "(t)o avoid any further complication,"[8] such that the final version of the second paragraph of Section 13, Article VII even completely omits any reference to the Judiciary, to wit:

> Section 13. xxx
>
> The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

Last: The movants take the majority to task for holding that Section 15, Article VII does not apply to appointments in the Judiciary. They aver that the Court either ignored or refused to apply many principles of statutory construction.

The movants gravely err in their posture, and are themselves apparently contravening their avowed reliance on the principles of statutory construction.

For one, the movants, disregarding the absence from Section 15, Article VII of the express extension of the ban on appointments to the Judiciary, insist that the ban applied to the Judiciary under the principle of *verba legis*. That is self-contradiction at its worst.

Another instance is the movants' unhesitating willingness to read into Section 4(1) and Section 9, both of Article VIII, the express applicability of the ban under Section 15, Article VII during the period provided therein, despite the silence of said provisions thereon. Yet, construction cannot supply the omission,

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[8] Record of the 1986 Constitutional Commission, Vol. 2, July 31, 1986, RCC No. 44. pp. 542-543.

for doing so would generally constitute an encroachment upon the field of the Constitutional Commission. Rather, Section 4(1) and Section 9 should be left as they are, given that their meaning is clear and explicit, and no words can be interpolated in them.[9] Interpolation of words is unnecessary, because the law is more than likely to fail to express the legislative intent with the interpolation. In other words, the addition of new words may alter the thought intended to be conveyed. And, even where the meaning of the law is clear and sensible, either with or without the omitted word or words, interpolation is improper, because the primary source of the legislative intent is in the language of the law itself.[10]

Thus, the decision of March 17, 2010 has fittingly observed:

> Had the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. **They would have *easily* and *surely* written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court.**

We cannot permit the meaning of the Constitution to be stretched to any unintended point in order to suit the purposes of any quarter.

FINAL WORD

It has been insinuated as part of the polemics attendant to the controversy we are resolving that because all the Members of the present Court were appointed by the incumbent President,

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[9] *Smith v. State*, 66 Md. 215, 7 Atl. 49.

[10] *State ex rel Everding v. Simon*, 20 Ore. 365, 26 Pac. 170.

a majority of them are now granting to her the authority to appoint the successor of the retiring Chief Justice.

The insinuation is misguided and utterly unfair.

The Members of the Court vote on the sole basis of their conscience and the merits of the issues. Any claim to the contrary proceeds from malice and condescension. Neither the outgoing President nor the present Members of the Court had arranged the current situation to happen and to evolve as it has. None of the Members of the Court could have prevented the Members composing the Court when she assumed the Presidency about a decade ago from retiring during her prolonged term and tenure, for their retirements were mandatory. Yet, she is now left with an imperative duty under the Constitution to fill up the vacancies created by such inexorable retirements within 90 days from their occurrence. Her official duty she must comply with. So must we ours who are tasked by the Constitution to settle the controversy.

ACCORDINGLY, the motions for reconsideration are denied with finality.

SO ORDERED.

Leonardo-de Castro, Abad, Villarama, Jr., and *Perez, JJ.,* concur.

Brion, J., see concurring and dissenting opinion.

Peralta, Del Castillo, and *Mendoza, JJ.,* join Justice Brion in his concurring and dissenting opinion.

Carpio Morales, J., see dissenting opinion.

Velasco, Jr., J., joins the dissent of *J.* Nachura.

Nachura, J., maintains his position that there is no justiciable controversy.

Puno, C.J., no part. Chairman of JBC.

Carpio, J., no part, prior inhibition.

Corona, J., no part.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

The Motions for Reconsideration

After sifting through the motions for reconsideration, I found that the arguments are largely the same arguments that we have passed upon, in one form or another, in the various petitions. Essentially, the issues boil down to ***justiciability***; the ***conflict of constitutional provisions***; the ***merits of the cited constitutional deliberations***; and the ***status and effect of the Valenzuela***[1] ***ruling.*** Even the motion for reconsideration of the Philippine Bar Association (G.R. No. 191420), whose petition I did not expressly touch upon in my Separate Opinion, basically dwells on these issues.

I have addressed most, if not all, of these issues and I submit my Separate Opinion[2] as my basic response to the motions for reconsideration, supplemented by the discussions below.

As I reflected in my Separate Opinion (which three other Justices joined),[3] **the election appointment ban under Article VII, Section 15 of the Constitution should not apply to the appointment of Members of the Supreme Court whose period for appointment is separately provided for under Article VIII, Section 4(1)**. I shared this conclusion with the Court's Decision although our reasons differed on some points.

I diverged fully from the Decision on the question of whether we should maintain or reverse our ruling in *Valenzuela*. I maintained that it is still good law; no reason exists to touch the

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[1] A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408. This A.M. involves the constitutional validity of the appointment of two (2) RTC Judges on March 30, 1998 – a date that falls within the supposed ban under Section 15, Article VII of the Constitution. We nullified the appointments.

[2] G.R. No. 191002 and companion cases, promulgated on March 17, 2010.

[3] Justices Diosdado M. Peralta, Mariano C. Del Castillo and Jose Catral Mendoza.

ruling as its main focus — *the application of the election ban on the appointment of lower court judges under Article VIII, Section 9 of the Constitution* — is not even an issue in the present case and was discussed only because the petitions incorrectly cited the ruling as authority on the issue of the Chief Justice's appointment. The Decision proposed to reverse *Valenzuela* but only secured the support of five (5) votes, while my Separate Opinion *in support of Valenzuela* had four (4) votes. Thus, on the whole, the Decision did not prevail in reversing *Valenzuela*, as it only had five (5) votes in a field of 12 participating Members of the Court. *Valenzuela* should therefore remain, as of the filing of this Opinion, as a valid precedent.

Acting on the present motions for reconsideration, I join the majority in denying the motions with respect to the Chief Justice issue, although we differ in some respects on the reasons supporting the denial. I dissent from the conclusion that the *Valenzuela* ruling should be reversed. My divergence from the majority's reasons and conclusions compels me to write this Concurring and Dissenting Opinion.

The Basic Requisites / Justiciability

One marked difference between the Decision and my Separate Opinion is our approach on the basic requisites/justiciability issues. The Decision apparently glossed over this aspect of the case, while I fully explained why the De Castro[4] and Peralta[5] petitions should be dismissed outright. In my view, these petitions violated the most basic requirements of their chosen medium for review — a petition for *certiorari* and *mandamus* under Rule 65 of the Rules of Court.

The petitions commonly failed to allege that the Judicial and Bar Council (*JBC*) performs judicial or quasi-judicial functions, an allegation that the petitions could not really make, since the JBC does not really undertake these functions and, for this

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[4] G.R. No. 191002, Petition for *Certiorari* and *Mandamus*.

[5] G.R. No. 191149, Petition for *Certiorari* and *Mandamus*.

reason, cannot be the subject of a petition for *certiorari*; hence, the petitions should be dismissed outright. They likewise failed to facially show any failure or refusal by the JBC to undertake a constitutional duty to justify the issuance of a writ of *mandamus;* they invoked judicial notice that we could not give because there was, and is, no JBC refusal to act.[6] Thus, the *mandamus* aspects of these petitions should have also been dismissed outright. The *ponencia*, unfortunately, failed to fully discuss these legal infirmities.

The motions for reconsideration lay major emphasis on the alleged lack of an actual case or controversy that made the Chief Justice's appointment a justiciable issue. They claim that the Court cannot exercise the power of judicial review where there is no clash of legal rights and interests or where this clash is merely anticipated, although the anticipated event shall come with certainty.[7]

What the movants apparently forgot, focused as they were on their respective petitions, is that the present case is not a single-petition case that rises or falls on the strength of that single petition. The present case involves various petitions and interventions,[8] *not necessarily pulling towards the same direction*, although each one is focused on the issue of whether the election appointment ban under Article VII, Section 15 of the Constitution should apply to the appointment of the next Chief Justice of the Supreme Court.

Among the petitions filed were those of **Tolentino** (G.R. No. 191342), **Soriano** (G.R. No. 191032) and **Mendoza** (A.M. No. 10-2-5-SC). The first two are petitions for prohibition

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[6] The JBC reiterates its position in its Comment (dated April 12, 2010) on the motions for reconsideration that it is still acting on the preparation of the list of nominees and is set to interview the nominees.

[7] See, for instance, the motion for reconsideration of intervenor Alfonso Tan, Jr.

[8] The docketed petitions were seven; the petitions-in-intervention were ten.

under Section 2 of Rule 65 of the Rules of Court.[9] While they commonly share this medium of review, they differ in their supporting reasons. The Mendoza petition, on the other hand, is totally different — it is a petition presented as an administrative matter (A.M.) in the manner that the *Valenzuela* case was an A.M. case. As I pointed out in the Separate Opinion, the Court uses the A.M. docket designation on matters relating to its exercise of supervision over all courts and their personnel.[10] I failed to note then, but I make of record now, that court rules and regulations — the outputs in the Court's rulemaking function – are also docketed as A.M. cases.

That an actual case or controversy involving a clash of rights and interests exists is immediately and patently obvious in the Tolentino and Soriano petitions. At the time the petitions were filed, the JBC had started its six-phase nomination process that would culminate in the submission of a list of nominees to the President of the Philippines for appointive action. Tolentino and Soriano — lawyers and citizens with interest in the strict observance of the election ban — sought to prohibit the JBC from continuing with this process. The JBC had started to act, without any prodding from the Court, because of its duty to start the nomination process but was hampered by the petitions filed and the legal questions raised that only the Supreme Court can settle with finality.[11] Thus, a clash of interests based on

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[9] A prohibition petition seeks to stop the proceedings of a tribunal, corporation, board, officer or person exercising judicial, quasi-judicial or ministerial functions if any of its act is without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

[10] Separate Opinion, p. 16.

[11] The JBC position states:

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Likewise, **the JBC has yet to take a position on when to submit the shortlist to the proper appointing authority, in light of Section 4(1), Article VIII of the Constitution, which provides that vacancy in the Supreme Court shall be filled within ninety (90) days from the occurrence thereof, Section 15, Article VII of the Constitution concerning the ban on Presidential appointments "two (2) months immediately before the next presidential elections and up to the**

law existed between the petitioners and the JBC. ***To state the obvious, a decision in favor of Tolentino or Soriano would result in a writ of prohibition that would direct the JBC not to proceed with the nomination process***.

The Mendoza petition cited the effect of a complete election ban on judicial appointments (in view of the already high level of vacancies and the backlog of cases) as basis, and submitted the question as an administrative matter that the Court, in the exercise of its supervisory authority over the Judiciary and the JBC itself, should act upon. At the same time, it cited the "public discourse and controversy" now taking place because of the application of the election ban on the appointment of the Chief Justice, pointing in this regard to the very same reasons mentioned in *Valenzuela* about the need to resolve the issue and avoid the recurrence of conflict between the Executive and the Judiciary, and the need to "avoid polemics concerning the matter."[12]

I recognized in the Separate Opinion that, unlike in *Valenzuela* where an outright defiance of the election ban took place, no such obvious triggering event transpired in the Mendoza petition.[13] Rather, the Mendoza petition looked to the supervisory power of the Court over judicial personnel and over the JBC as basis to secure a resolution of the election ban issue. The JBC, at that time, had indicated its intent to look up to the Court's supervisory power and role as the final interpreter of the Constitution to guide it in responding to the challenges it confronts.[14] To me, this was "a point no less critical, *from the*

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end of his term" and Section 261(g), Article XXIII of the Omnibus Election Code of the Philippines.

12. **Since the Honorable Supreme Court is the final interpreter of the Constitution, the JBC will be guided by its decision in these consolidated Petitions and Administrative Matter**. [Emphasis supplied.]

[12] Mendoza Petition, pp. 5-6.

[13] Separate Opinion, pp. 16-17.

[14] *Supra* note 11.

point of view of supervision, than the appointment of the two judges during the election ban period in *Valenzuela*."[15]

In making this conclusion, I pointed out in my Separate Opinion the unavoidable surrounding realities evident from the confluence of events, namely: (1) an election to be held on May 10, 2010; (2) the retirement of the Chief Justice on May 17, 2010; (3) the lapse of the terms of the elective officials from the President to the congressmen on June 30, 2010; (4) the delay before the Congress can organize and send its JBC representatives; and (5) the expiration of the term of a non-elective JBC member in July 2010.[16] All these — juxtaposed with the Court's

[15] *Id.* at 17.

[16] Separate Opinion, pp. 19-22:

A **first reality** is that the JBC cannot, *on its own due to lack of the proper authority*, determine the appropriate course of action to take under the Constitution. Its principal function is to recommend appointees to the Judiciary and it has no authority to interpret constitutional provisions, even those affecting its principal function; the authority to undertake constitutional interpretation belongs to the courts alone.

A **second reality** is that the disputed constitutional provisions do not stand alone and cannot be read independently of one another; the Constitution and its various provisions have to be read and interpreted as one seamless whole, giving sufficient emphasis to every aspect in accordance with the hierarchy of our constitutional values. *The disputed provisions should be read together and, as reflections of the will of the people, should be given effect to the extent that they should be reconciled.*

The **third reality**, closely related to the second, is that in resolving the coverage of the election ban *vis-à-vis* the appointment of the Chief Justice and the Members of the Court, provisions of the Constitution other than the disputed provisions must be taken into account. In considering when and how to act, the JBC has to consider that:

1. The President has a term of six years which **begins at noon of June 30** following the election, which implies that the outgoing President remains President up to that time. (*Section 4, Article VII*). The President assumes office at the beginning of his or her term, with provision for the situations where the President fails to qualify or is unavailable at the beginning of his term (*Section 7, Article VII*).

2. The Senators and the Congressmen begin their respective terms also at **midday of June 30** (*Sections 4 and 7, Article VI*). The Congress convenes on the **4th Monday of July** for its regular session, but the President may call a special session at any time. (*Section 15, Article VI*)

supervision over the JBC, the latter's need for guidance, and the existence of an actual controversy on the same issues bedeviling the JBC — in my view, were sufficient to save the Mendoza petition from being a mere request for opinion or a petition for

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3. The *Valenzuela* case cited as authority for the position that the election ban provision applies to the whole Judiciary, only decided the issue with respect to lower court judges, specifically, those covered by Section 9, Article VIII of the Constitution. Any reference to the filling up of vacancies in the Supreme Court pursuant to Section 4(1), Article VIII constitutes *obiter dictum* as this issue was not directly in issue and was not ruled upon.

These provisions and interpretation of the *Valenzuela* ruling — when read together with disputed provisions, related with one another, and considered with the May 17, 2010 retirement of the current Chief Justice — bring into focus certain unavoidable realities, as follows:

1. If the election ban would apply fully to the Supreme Court, the incumbent President cannot appoint a Member of the Court beginning March 10, 2010, all the way up to June 30, 2010.

2. The retirement of the incumbent Chief Justice – May 17, 2010 – falls within the period of the election ban. (*In an extreme example where the retirement of a Member of the Court falls on or very close to the day the election ban starts, the Office of the Solicitor General calculates in its Comment that the whole 90 days given to the President to make appointment would be covered by the election ban.*)

3. Beginning May 17, 2010, the Chief Justice position would be vacant, giving rise to the question of whether an Acting Chief Justice can act in his place. While this is essentially a Supreme Court concern, the Chief Justice is the *ex officio* Chair of the JBC; hence it must be concerned and be properly guided.

4. The appointment of the new Chief Justice has to be made within 90 days from the time the vacancy occurs, which translates to a deadline of August 15, 2010.

5. The deadline for the appointment is fixed (as it is not reckoned from the date of submission of the JBC list, as in the lower courts) which means that the JBC ideally will have to make its list available at the start of the 90-day period so that its process will not eat up the 90-day period granted the President.

6. After noon of June 30, 2010, the JBC representation from Congress would be vacant; the current representatives' mandates to act for their principals extend only to the end of their present terms; thus, the JBC shall be operating at that point at less than its full membership.

declaratory relief that falls under the jurisdiction of the lower court. This recognition is beyond the level of what this Court can do in handling a moot and academic case — usually, one that no longer presents a judiciable controversy but one that can still be ruled upon at the discretion of the court when the constitutional issue is of paramount public interest and controlling principles are needed to guide the bench, the bar and the public.[17]

To be sure, this approach in recognizing when a petition is actionable is novel. An overriding reason for this approach can be traced to the nature of the petition, as *it rests on the Court's supervisory authority and relates to the exercise of the Court's administrative rather than its judicial functions* (other than these two functions, the Court also has its rulemaking function under Article VIII, Section 5(5) of the Constitution). Strictly speaking, the Mendoza petition calls for directions from the Court in the exercise of its power of supervision over the JBC,[18]

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7. Congress will not convene until the 4th Monday of July, 2010, but would still need to organize before the two Houses of Congress can send their representatives to the JBC – a process may extend well into August, 2010.

8. By July 5, 2010, one regular member of the JBC would vacate his post. Filling up this vacancy requires a presidential appointment and the concurrence of the Commission on Appointments.

9. Last but not the least, the prohibition in Section 15, Article VII is that "a President or Acting President shall not make appointments." This prohibition is expressly addressed to the President and covers the act of appointment; the prohibition is not against the JBC in the performance of its function of "recommending appointees to the Judiciary" – an act that is one step away from the act of making appointments.

[17] *The Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel Ancestral Domain*, G.R. Nos. 183591, 183791, 183752, 183893, 183951 and 183962, October 14, 2008.

[18] By virtue of its power of administrative supervision, the Supreme Court oversees the judges' and court personnel's compliance with the laws, rules and regulations. It may take the proper administrative action against them if they commit any violation. See *Ampong v. CSC*, G.R. No. 107910, August 26, 2008, 563 SCRA 293. The Constitution separately provides for the Supreme Court's supervision over the JBC. See Article VIII, Section 8 of the CONSTITUTION.

not on the basis of the power of judicial review.[19] In this sense, it does not need the actual clash of interests ***of the type that a judicial adjudication requires***. All that must be shown is the active need for supervision to justify the Court's intervention as supervising authority.

Under these circumstances, the Court's recognition of the Mendoza petition was not an undue stretch of its constitutional powers. If the recognition is unusual at all, it is so only because of its novelty; to my knowledge, ***this is the first time ever in Philippine jurisprudence that the supervisory authority of the Court over an attached agency has been highlighted in this manner***. Novelty, *per se*, however, is not a ground for objection nor a mark of infirmity for as long as the novel move is founded in law. In this case, as in the case of the writ of *amparo* and *habeas data* that were then novel and avowedly activist in character, sufficient legal basis exists to actively invoke the Court's supervisory authority — granted under the Constitution, no less — as basis for action.

To partly quote the wording of the Constitution, Article VIII, Section 8(1) and (5) provide that "*A Judicial and Bar Council is hereby created* ***under the supervision*** *of the Supreme Court… It may exercise such other functions and duties as the Supreme Court may assign to it*." Supervision, as a legal concept, more often than not, is defined in relation with the concept of control.[20] In *Social Justice Society v. Atienza*,[21] we defined "supervision" as follows:

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[19] Judicial Review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution, *Garcia v. Executive Secretary*, G.R. No. 157584, April 2, 2009.

[20] Control is the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. It is distinguished from supervision in that the latter means overseeing, or the power or authority of an officer to see that subordinate officers perform their duties, and if the latter fail or neglect to fulfill them, then the former may take such action or steps as prescribed by law to make them perform these duties. Nachura, J., *Outline Reviewer in Political Law*, 2006 ed., p. 276.

[21] G.R. No. 156052, February 13, 2008, 545 SCRA 92.

[Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.

Under this definition, the Court cannot dictate on the JBC the results of its assigned task, *i.e.*, who to recommend or what standards to use to determine who to recommend. It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to *"take such action or step as prescribed by law to make them perform their duties,"* if the duties are not being performed because of JBC's fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties — a power that suggests authority beyond what is purely supervisory.

Where the JBC itself is at a loss on how to proceed in light of disputed constitutional provisions that require interpretation,[22] the Court is not legally out of line — as the final authority on the interpretation of the Constitution and as the entity constitutionally-tasked to supervise the JBC — in exercising its oversight function by clarifying the interpretation of the disputed constitutional provision to guide the JBC. In doing this, the Court is not simply rendering a general legal advisory; it is providing concrete and specific legal guidance to the JBC in the exercise of its supervisory authority, after the latter has asked for assistance in this regard. That the Court does this while concretely resolving actual controversies (the Tolentino and Soriano petitions) on the same issue immeasurably strengthens the intrinsic correctness of the Court's action.

It may be asked: why does the Court have to recognize the Mendoza petition when it can resolve the conflict between

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[22] *Supra* notes 11 and 14.

Article VII, Section 15 and Article VIII, Section 4(1) through the Tolentino and Soriano petitions?

The answer is fairly simple and can be read between the lines of the above explanation on the relationship between the Court and the JBC. *First*, administrative is different from judicial function and providing guidance to the JBC can only be appropriate in the discharge of the Court's administrative function. *Second*, the resolution of the Tolentino and Soriano petitions will lead to rulings directly related to the underlying facts of these petitions, without clear guidelines to the JBC on the proper parameters to observe *vis-à-vis* the constitutional dispute along the lines the JBC needs. In fact, concrete guidelines addressed to the JBC in the resolution of the Tolentino/Soriano petitions may even lead to accusations that the Court's resolution is broader than is required by the facts of the petitions. The Mendoza petition, because it pertains directly to the performance of the JBC's duty and the Court's supervisory authority, allows the issuance of precise guidelines that will enable the JBC to fully and seasonably comply with its constitutional mandate.

I hasten to add that the JBC's constitutional task is not as simple as some people think it to be. The process of preparing and submitting a list of nominees is an arduous and time-consuming task that cannot be done overnight. It is a six-step process lined with standards requiring the JBC to attract the best available candidates, to examine and investigate them, to exhibit transparency in all its actions while ensuring that these actions conform to constitutional and statutory standards (such as the election ban on appointments), to submit the required list of nominees on time, and to ensure as well that all these acts are politically neutral. On the time element, the JBC list for the Supreme Court has to be submitted on or before the vacancy occurs given the 90-day deadline that the appointing President is given in making the appointment. ***The list will be submitted, not to the President as an outgoing President, nor to the election winner as an incoming President, but to the President of the Philippines whoever he or she may be.*** If the *incumbent President* does not act on the JBC list within the time left in her term, the same list shall be available to the *new President*

for him to act upon. In all these, the Supreme Court bears the burden of overseeing that the JBC's duty is done, unerringly and with utmost dispatch; the Court cannot undertake this supervision in a manner consistent with the Constitution's expectation from the JBC unless it adopts a pro-active stance within the limits of its supervisory authority.

The Disputed Provisions

The movants present their arguments on the main issue at several levels. Some argue that the disputed constitutional provisions — Article VII, Section 15 and Article VIII, Section 4(1) — are clear and speak for themselves on what the Constitution covers in banning appointments during the election period.[23] One even posits that there is no conflict because both provisions can be given effect without one detracting against the full effectiveness of the other,[24] although the effect is to deny the sitting President the option to appoint in favor of a deferment for the incoming President's action. Still others, repeating their original arguments, appeal to the principles of interpretation and latin maxims to prove their point.[25]

In my discussions in the Separate Opinion, I stated upfront my views on how the disputed provisions interact with each other. Read singly and in isolation, they appear clear (this reading applies the "plain meaning rule" that Tolentino advocates in his motion for reconsideration, as explained below). Arrayed side by side with each other and considered in relation with the other provisions of the Constitution, particularly its structure and underlying intents, the conflict however becomes obvious and unavoidable.

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[23] Philippine Bar Association (*PBA*), Women Trial Lawyers Organization of the Philippines (*WTLOP*), Atty. Amador Z. Tolentino, Atty. Roland B. Inting, Peter Irving Corvera and Alfonso V. Tan, Jr.

[24] See PBA's Motion for Reconsideration.

[25] See the Motions for Reconsideration for PBA, WTLOP, Atty. Amador Z. Tolentino, Atty. Roland B. Inting, Peter Irving Corvera and Alfonso V. Tan, Jr.

Section 15 on its face disallows any appointment in clear negative terms ("*shall not make*") without specifying the appointments covered by the prohibition.[26] From this literal and isolated reading springs the argument that no exception is provided (except that found in Section 15 itself) so that even the Judiciary is covered by the ban on appointments.

On the other hand, Section 4(1) is likewise very clear and categorical in its terms: any vacancy in the Court *shall be filled within 90 days from its occurrence*.[27] In the way of Section 15, Section 4(1) is also clear and categorical and provides no exception; the appointment refers solely to the Members of the Supreme Court and does not mention any period that would interrupt, hold or postpone the 90-day requirement.

From this perspective, the view that no conflict exists cannot be seriously made, unless with the mindset that one provision controls and the other should yield. Many of the petitions in fact advocate this kind of reading, some of them openly stating that the power of appointment should be reserved for the incoming President.[28] The question, however, is whether — from the viewpoint of strict law and devoid of the emotionalism and political partisanship that permeate the present Philippine political environment — this kind of mindset can really be adopted in reading and applying the Constitution.

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[26] CONSTITUTION, Article VII, Section 15:

> Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President **shall not make appointments**, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

[27] CONSTITUTION, Article VIII, Section 4(1):

> (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. Any vacancy **shall be filled** within ninety days from the occurrence thereof.

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[28] See Petition on Intervention of WTLOP, as cited in the decision in the above-captioned cases; see also: PBA's motion for reconsideration.

In my view, this kind of mindset and the conclusion it inevitably leads to cannot be adopted; the provisions of the Constitution cannot be read in isolation from what the whole contains. To be exact, the Constitution must be read and understood as a whole, reconciling and harmonizing apparently conflicting provisions so that all of them can be given full force and effect,[29] unless the Constitution itself expressly states otherwise.[30]

Not to be forgotten in reading and understanding the Constitution are the many established underlying constitutional principles that we have to observe and respect if we are to be true to the Constitution. These principles — among them the principles of checks and balances and separation of powers — are not always expressly stated in the Constitution, but no one who believes in and who has studied the Constitution can deny that they are there and deserve utmost attention, respect, and even priority consideration.

In establishing the structures of government, the ideal that the Constitution seeks to achieve is one of balance among the three great departments of government — the Executive, the Legislative and the Judiciary, with each department undertaking its constitutionally-assigned task as a check against the exercise of power by the others, while all three departments move forward in working for the progress of the nation. Thus, the Legislature makes the laws and is supreme in this regard, in the way that the Executive is supreme in enforcing and administering the law, while the Judiciary interprets both the Constitution and the law. Any provision in each of the Articles on these three departments[31] that intrudes into the other must be closely examined if the provision affects and upsets the desired balance.

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[29] *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, citing *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 (1991); *Peralta v. Commission on Elections*, G.R. No. L-47771, March 11, 1978, 82 SCRA 30 (1978); *Ang-Angco v. Castillo*, G.R. No. L-17169, November 30, 1963, 9 SCRA 619 (1963).

[30] *Macalintal v. Commission on Elections*, G.R. No. 157013, July 10, 2003, 310 SCRA 614, citing *Chiongbian v. De Leon*, 82 Phil. 771 (1949).

[31] Article VI for the Legislature, Article VII for the Executive, and Article VIII for the Judiciary.

Under the division of powers, the President as Chief Executive is given the prerogative of making appointments, subject only to the legal qualification standards, to the checks provided by the Legislature's Commission on Appointments (when applicable) and by the JBC for appointments in the Judiciary, and to *the Constitution's own limitations.* Conflict comes in when the Constitution laid down Article VII, Section 15 *limiting the President's appointing power* during the election period. This limitation of power would have been all-encompassing and would, thus, have extended to all government positions the President can fill, *had the Constitution not inserted a provision, also on appointments*, in the Article on the Judiciary with respect to appointments to the Supreme Court. This conflict gives rise to the questions: **which provision should prevail, or should both be given effect? Or should both provisions yield to a higher concern — the need to maintain the integrity of our elections?**

A holistic reading of the Constitution – a must in constitutional interpretation — dictates as a general rule that the tasks assigned to each department and their limitations should be given full effect to fulfill the constitutional purposes under the check and balance principle, unless the Constitution itself expressly indicates its preference for one task, concern or standard over the others,[32] or unless this Court, in its role as interpreter of the Constitution, has spoken on the appropriate interpretation that should be made.[33]

In considering the interests of the Executive and the Judiciary, a holistic approach starts from the premise that the constitutional scheme is to grant the President the power of appointment, subject to the limitation provided under Article VII, Section 15. At the same time, the Judiciary is assured, without qualifications under Article VIII, Section 4(1), of the immediate appointment of Members of the Supreme Court, *i.e.*, within 90 days from the occurrence of the vacancy. *If both provisions would be*

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[32] See *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002, 380 SCRA 49; where the court resolved the clash between the power of the President to extend *ad interim* appointments and the power of the Commission on Appointments to confirm presidential appointments.

[33] *Ibid.*

allowed to take effect, ***as I believe they should****, the limitation on the appointment power of the President under Article VII, Section 15 should itself be limited by the appointment of Members of the Court pursuant to Article VIII, Section 4(1), so that the provision applicable to the Judiciary can be given full effect without detriment to the President's appointing authority.* This harmonization will result in restoring to the President the full authority to appoint Members of the Supreme Court pursuant to the combined operation of Article VII, Section 15 and Article VIII, Section 4(1).

Viewed in this light, there is essentially no conflict, in terms of the authority to appoint, between the Executive and Judiciary; the President would effectively be allowed to exercise the Executive's traditional presidential power of appointment while respecting the Judiciary's own prerogative. In other words, the President retains full powers to appoint Members of the Court during the election period, and the Judiciary is assured of a full membership within the time frame given.

Interestingly, the objection to the full application of Article VIII, Section 4(1) comes, not from the current President, but mainly from petitioners echoing the present presidential candidates, one of whom shall soon be the incoming President. They do not, of course, cite reasons of power and the loss of the opportunity to appoint the Chief Justice; many of the petitioners/intervenors oppose the full application of Article VIII, Section 4(1) based *on the need to maintain the integrity of the elections* through the avoidance of a "midnight appointment."

This "integrity" reason is a *given* in a democracy and can hardly be opposed on the theoretical plane, as the integrity of the elections must indeed prevail in a true democracy. The statement, however, begs a lot of questions, among them the question of whether the appointment of a full Court under the terms of Article VIII, Section 4(1) will *adversely affect or enhance* the integrity of the elections.

In my Separate Opinion, I concluded that the appointment of a Member of the Court even during the election period *per se* implies no adverse effect on the integrity of the election; a

full Court is ideal during this period in light of the Court's unique role during elections. I maintain this view and fully concur in this regard with the majority.

During the election period, the court is not only the interpreter of the Constitution and the election laws; other than the Commission on Elections and the lower courts to a limited extent, the Court is likewise the highest impartial recourse available to decisively address any problem or dispute arising from the election. It is the leader and the highest court in the Judiciary, the only one of the three departments of government directly unaffected by the election. The Court is likewise the entity entrusted by the Constitution, no less, with the gravest election-related responsibilities. In particular, it is the sole judge of all contests in the election of the President and the Vice-President, with leadership and participation as well in the election tribunals that directly address Senate and House of Representatives electoral disputes. With this grant of responsibilities, the Constitution itself has spoken on the trust it reposes on the Court on election matters. This reposed trust, to my mind, renders academic any question of whether an appointment during the election period will adversely affect the integrity of the elections — it will not, as the maintenance of a full Court in fact contributes to the enforcement of the constitutional scheme to foster a free and orderly election.

In reading the motions for reconsideration against the backdrop of the partisan political noise of the coming elections, one cannot avoid hearing echoes from some of the arguments that the objection is related, more than anything else, to their lack of trust in an appointment to be made by the incumbent President who will soon be bowing out of office. They label the incumbent President's act as a "midnight appointment" — a term that has acquired a pejorative meaning in contemporary society.

As I intimated in my Separate Opinion, the imputation of distrust can be made against any appointing authority, whether outgoing or incoming. The incoming President himself will be before this Court if an election contest arises; any President, past or future, would also naturally wish favorable outcomes in

legal problems that the Court would resolve. These possibilities and the potential for continuing influence in the Court, however, cannot be active considerations in resolving the election ban issue as they are, in their present form and presentation, all speculative. If past record is to be the measure, the record of past Chief Justices and of this Court speaks for itself with respect to the Justices' relationship with, and deferral to, the appointing authority in their decisions.

What should not be forgotten in examining the records of the Court, from the prism of problems an electoral exercise may bring, is the Court's unique and proven capacity to intervene and diffuse situations that are potentially explosive for the nation. EDSA II particularly comes to mind in this regard (although it was an event that was not rooted in election problems) as it is a perfect example of the potential for damage to the nation that the Court can address *and has addressed*. When acting in this role, a vacancy in the Court is not only a vote less, but a significant contribution less in the Court's deliberations and capacity for action, especially if the missing voice is the voice of the Chief Justice.

Be it remembered that if any EDSA-type situation arises in the coming elections, it will be compounded by the lack of leaders because of the lapse of the President's term by June 30, 2010; by a possible failure of succession if for some reason the election of the new leadership becomes problematic; and by the similar absence of congressional leadership because Congress has not yet convened to organize itself.[34] In this scenario, only the Judiciary of the three great departments of government stands unaffected by the election and should at least therefore be complete to enable it to discharge its constitutional role to its fullest potential and capacity. To state the obvious, leaving the Judiciary without any permanent leader in this scenario may immeasurably complicate the problem, as all three departments of government will then be leaderless.

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[34] *Supra* note 13.

To stress what I mentioned on this point in my Separate Opinion, the absence of a Chief Justice will make a lot of difference in the effectiveness of the Court as he or she heads the Judiciary, sits as Chair of the JBC and of the Presidential Electoral Tribunal, presides over impeachment proceedings, and provides the moral suasion and leadership that only the permanent mantle of the Chief Justice can bestow. EDSA II is just one of the many lessons from the past when the weightiest of issues were tackled and promptly resolved by the Court. Unseen by the general public in all these was the leadership that was there to ensure that the Court would act as one, in the spirit of harmony and stability although divergent in their individual views, as the Justices individually make their contributions to the collegial result. To some, this leadership may only be symbolic, as the Court has fully functioned in the past even with an incomplete membership or under an Acting Chief Justice. But as I said before, an incomplete Court "is not a whole Supreme Court; it will only be a Court with 14 members who would act and vote on all matters before it." To fully recall what I have said on this matter:

> The importance of the presence of one Member of the Court can and should never be underestimated, particularly on issues that may gravely affect the nation. Many a case has been won or lost on the basis of one vote. On an issue of the constitutionality of a law, treaty or statute, a tie vote — which is possible in a 14 member court — means that the constitutionality is upheld. This was our lesson in *Isagani Cruz v. DENR Secretary*.
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> More than the vote, Court deliberation is the core of the decision-making process and one voice is less is not only a vote less but a contributed opinion, an observation, or a cautionary word less for the Court. One voice can be a big difference if the missing voice is that of the Chief Justice.
>
> Without meaning to demean the capability of an Acting Chief Justice, the ascendancy in the Court of a permanent sitting Chief Justice cannot be equaled. He is the first among equals – a *primus inter pares* — who sets the tone for the Court and the Judiciary, and who is looked up to on all matters, whether administrative or judicial. To the world outside the Judiciary, he is the personification of the Court and the whole Judiciary. And this is not surprising since,

as Chief Justice, he not only chairs the Court *en banc*, but chairs as well the Presidential Electoral Tribunal that sits in judgment over election disputes affecting the President and the Vice-President. Outside of his immediate Court duties, he sits as Chair of the Judicial and Bar Council, the Philippine Judicial Academy and, by constitutional command, presides over the impeachment of the President. To be sure, the Acting Chief Justice may be the ablest, but he is not the Chief Justice without the mantle and permanent title of the Office, and even his presence as Acting Chief Justice leaves the Court with one member less. Sadly, this member is the Chief Justice; even with an Acting Chief Justice, the Judiciary and the Court remains headless.[35]

Given these views, I see no point in re-discussing the finer points of technical interpretation and their supporting latin maxims that I have addressed in my Separate Opinion and now feel need no further elaboration; maxims can be found to serve a pleader's every need and in any case are the last interpretative tools in constitutional interpretation. Nor do I see any point in discussing arguments based on the intent of the framers of the Constitution now cited by the parties in the contexts that would serve their own ends. As may be evident in these discussions, other than the texts of the disputed provisions, I prefer to examine their purposes and the consequences of their application, understood within the context of democratic values. Past precedents are equally invaluable for the lead, order, and stability they contribute, but only if they are in point, certain, and still alive to current realities, while the history of provisions, including the intents behind them, are primarily important to ascertain the purposes the provisions serve.

From these perspectives and without denigrating the framers' historical contributions, I say that it is the Constitution that now primarily speaks to us in this case and what we hear are its direct words, not merely the recorded isolated debates reflecting the personal intents of the constitutional commissioners as cited by the parties to fit their respective theories. The voice speaking the words of the Constitution is our best guide, as these words

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[35] Separate Opinion, p. 32.

will unalterably be there for us to read in the context of their purposes and the nation's needs and circumstances. This Concurring and Dissenting Opinion hears and listens to that voice.

The *Valenzuela* Decision

The *ponencia's* ruling reversing *Valenzuela,* in my view, is out of place in the present case, since at issue here is the appointment of the Chief Justice during the period of the election ban, not the appointment of lower court judges that *Valenzuela* resolved. To be perfectly clear, the conflict in the constitutional provisions is not confined to Article VII, Section 15 and Article VIII, Section 4(1) with respect to the appointment of Members of the Supreme Court; even before the *Valenzuela* ruling, the conflict already existed between Article VII, Section 15 and Article VIII, Section 9 — the provision on the appointment of the justices and judges of courts lower than the Supreme Court. After this Court's ruling in *Valenzuela*, no amount of hairsplitting can result in the conclusion that Article VII, Section 15 applied the election ban *over the whole Judiciary, including the Supreme Court,* as the facts and the *fallo* of *Valenzuela* plainly spoke of the objectionable appointment of two Regional Trial Court judges. To reiterate, *Valenzuela* only resolved the conflict between Article VII, Section 15 and appointments to the Judiciary under Article VIII, **Section 9**.

If *Valenzuela* did prominently figure at all in the present case, the prominence can be attributed to the petitioners' mistaken reading that this case is *primary authority* for the dictum that Article VII, Section 15 completely bans all appointments to the Judiciary, including appointments to the Supreme Court, during the election period up to the end of the incumbent President's term.

In reality, this mistaken reading is an *obiter dictum* in Valenzuela, and hence, cannot be cited for its primary precedential value. This legal situation still holds true as *Valenzuela* was not doctrinally reversed as its proposed reversal was supported only by five (5) out of the 12 participating Members of the

Court. In other words, this ruling on how Article VII, Section 15 is to be interpreted in relation with Article VIII, Section 9, should continue to stand unless otherwise expressly reversed by this Court.

But separately from the mistaken use of an *obiter* ruling as primary authority, I believe that I should sound the alarm bell about the *Valenzuela* ruling in light of a recent vacancy in the position of Presiding Justice of the Sandiganbayan resulting from Presiding Justice Norberto Geraldez' death soon after we issued the decision in the present case. Reversing the *Valenzuela* ruling now, *in the absence of a properly filed case addressing an appointment at this time to the Sandiganbayan or to any other vacancy in the lower courts,* will be ***an irregular ruling of the first magnitude*** by this Court, as it will effectively be a shortcut that lifts the election ban on appointments to the lower courts without the benefit of a case whose facts and arguments would directly confront the continued validity of the *Valenzuela* ruling. This is especially so after we have placed the Court on notice that a reversal of *Valenzuela* is uncalled for because its ruling is not the litigated issue in this case.

In any case, let me repeat what I stressed in my Separate Opinion about *Valenzuela* which rests on the reasoning that the evils Section 15 seeks to remedy — vote buying, midnight appointments and partisan reasons to influence the elections — exist, thus justifying an election appointment ban. In particular, the "midnight appointment" justification, while fully applicable to the more numerous vacancies at the lower echelons of the Judiciary (*with an alleged current lower court vacancy level of 537 or a 24.5% vacancy rate*), should not apply to the Supreme Court which has only a total of 15 positions that are not even vacated at the same time. The most number of vacancies for any one year occurred only last year (2009) when seven (7) positions were vacated by retirement, but this vacancy rate is not expected to be replicated at any time within the next decade. Thus "midnight appointments" to the extent that they were understood in *Aytona*[36] will not occur in the vacancies of this

[36] *Aytona v. Castillo*, G.R. No. L-19315, January 19, 1962, 4 SCRA 1.

Court as nominations to its vacancies are all processed through the JBC under the public's close scrutiny. As already discussed above, the institutional integrity of the Court is hardly an issue. If at all, only objections personal to the individual Members of the Court or against the individual applicants can be made, but these are matters addressed in the first place by the JBC before nominees are submitted. There, too, are specific reasons, likewise discussed above, explaining why the election ban should not apply to the Supreme Court. These exempting reasons, of course, have yet to be shown to apply to the lower courts. Thus, on the whole, the reasons justifying the election ban in *Valenzuela* still obtain in so far as the lower courts are concerned, and have yet to be proven otherwise in a properly filed case. Until then, *Valenzuela*, ***except to the extent that it mentioned Section 4(1)***, should remain an authoritative ruling of this Court.

CONCLUSION

In light of these considerations, a writ of prohibition cannot issue to prevent the JBC from performing its principal function, under the Constitution, of recommending nominees for the position of Chief Justice. Thus, I vote to deny with finality the Tolentino and Soriano motions for reconsideration.

The other motions for reconsideration in so far as they challenge the conclusion that the President can appoint the Chief Justice even during the election period are likewise denied with finality for lack of merit, but are granted in so far as they support the continued validity of the ruling of this Court in *In Re: Valenzuela and Vallarta*, A.M. No. 98-5-01-SC, November 9, 1998.

My opinion on the Mendoza petition stands.

DISSENTING OPINION

CARPIO MORALES, *J.*:

No compelling reason exists for the Court to deny a reconsideration of the assailed Decision. The various motions for reconsideration raise hollering substantial arguments and

legitimately nagging questions which the Court must meet head on.

If this Court is to deserve or preserve its revered place not just in the hierarchy but also in history, passion for reason demands the issuance of an extended and extensive resolution that confronts the ramifications and repercussions of its assailed Decision. Only then can it offer an illumination that any self-respecting student of the law clamors and any adherent of the law deserves. Otherwise, it takes the risk of reeking of an objectionable air of supreme judicial arrogance.

It is thus imperative to settle the following issues and concerns:

Whether the incumbent President is constitutionally proscribed from appointing the successor of Chief Justice Reynato S. Puno upon his retirement on May 17, 2010 until the ban ends at 12:00 noon of June 30, 2010

1. In interpreting the subject constitutional provisions, the Decision disregarded established canons of statutory construction. Without explaining the inapplicability of each of the relevant rules, the Decision immediately placed premium on the arrangement and ordering of provisions, one of the weakest tools of construction, to arrive at its conclusion.

2. In reversing *Valenzuela*, the Decision held that the *Valenzuela* dictum did not firmly rest on ConCom deliberations, yet it did not offer to cite a material ConCom deliberation. It instead opted to rely on the *memory* of Justice Florenz Regalado which incidentally mentioned only the "Court of Appeals." The Decision's conclusion must rest on the strength of its own favorable Concom deliberation, none of which to date has been cited.

3. Instead of choosing which constitutional provision carves out an exception from the other provision, the most legally feasible interpretation (in the limited cases of temporary physical or

legal impossibility of compliance, as expounded in my Dissenting Opinion) is to consider the appointments ban or other substantial obstacle as a temporary impossibility which excuses or releases the constitutional obligation of the Office of the President for the duration of the ban or obstacle.

In view of the temporary nature of the circumstance causing the impossibility of performance, the outgoing President is released from non-fulfillment of the obligation to appoint, and the duty devolves upon the new President. The delay in the fulfillment of the obligation becomes excusable, since the law cannot exact compliance with what is impossible. The 90-day period within which to appoint a member of the Court is thus suspended and the period could only start or resume to run when the temporary obstacle disappears (*i.e.*, after the period of the appointments ban; when there is already a quorum in the JBC; or when there is already at least three applicants).

Whether the Judicial and Bar Council is obliged to submit to the President the shortlist of nominees for the position of Chief Justice (or Justice of this Court) on or before the occurrence of the vacancy.

1. The ruling in the Decision that obligates the JBC to submit the shortlist to the President on or before the occurrence of the vacancy in the Court runs counter to the Concom deliberations which explain that the 90-day period is allotted for *both* the nomination by the JBC and the appointment by the President. In the move to increase the period to 90 days, Commissioner Romulo stated that "[t]he sense of the Committee is that 60 days is awfully short and that the [Judicial and Bar] Council, as well as the President, may have difficulties with that."

2. To require the JBC to submit to the President a shortlist of nominees on or before the occurrence of vacancy in the Court leads to preposterous results. It bears reiterating that the requirement is absurd when, *inter alia*, the vacancy is occasioned by the death of a member of the Court, in which case the JBC

could never anticipate the death of a Justice, and could never submit a list to the President on or before the occurrence of vacancy.

3. The express allowance in the Constitution of a 90-day period of vacancy in the membership of the Court rebuts any public policy argument on avoiding a vacuum of even a single day without a duly appointed Chief Justice. Moreover, as pointed out in my Dissenting Opinion, the practice of having an acting Chief Justice in the interregnum is provided for by law, confirmed by tradition, and settled by jurisprudence to be an internal matter.

The RESOLUTION of the majority, in denying the present Motions for Reconsideration, failed to rebut the foregoing crucial matters.

I, THEREFORE, maintain my dissent and vote to GRANT the Motions for Reconsideration of the Decision of March 17, 2010 insofar as it holds that the incumbent President is not constitutionally proscribed from appointing the successor of Chief Justice Reynato S. Puno upon his retirement on May 17, 2010 until the ban ends at 12:00 noon of June 30, 2010 and that the Judicial and Bar Council is obliged to submit to the President the shortlist of nominees for the position of Chief Justice on or before May 17, 2010.

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— There is effective registration once the registrant has fulfilled all that is needed of him for purposes of entry and annotation, so that what is left to be accomplished lies solely on the Register of Deeds. (National Housing Authority *vs*. Basa, Jr., G.R. No. 149121, April 20, 2010) p. 471

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the sale. (National Housing Authority *vs*. Basa, Jr., G.R. No. 149121, April 20, 2010) p. 471

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Lack of jurisdiction as a ground — May be raised at any stage of the proceedings. (Sps. Alcantara *vs*. Nido, G.R. No. 165133, April 19, 2010) p. 343

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Holder in due course — Defined. (Dino *vs*. Judal-Loot, G.R. No. 170912, April 19, 2010) p. 402

Holder not in due course — Established when one is guilty of gross negligence amounting to legal absence of good faith. (Dino *vs*. Judal-Loot, G.R. No. 170912, April 19, 2010) p. 402

— In case thereof, the negotiable instrument is subject to defenses as if it were non-negotiable. *(Id.)*

Presentment for payment — Improper when not made by the payee or a party authorized to make the presentment. (Dino *vs*. Judal-Loot, G.R. No. 170912, April 19, 2010) p. 402

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Class suit — Factors in determining the question of adequate and fair representation of members of a class. (Atty. Banda *vs*. Hon. Ermita, G.R. No. 166620, April 20, 2010) p. 501

— Not proper where there is an apparent conflict between petitioner's interests and those of the persons whom they claim to represent. *(Id.)*

— Requisites. *(Id.)*

Real party-in-interest — Defined. (Regional Agrarian Reform Adjudication Board *vs.* CA, G.R. No. 165155, April 13, 2010) p. 191

— Elucidated. (Alonso *vs*. Cebu Country Club, Inc., G.R. No. 188471, April 20, 2010) p. 637

— The heirs of the deceased agricultural lessees and actual tillers on the land are real parties-in-interest in the agrarian dispute. (Regional Agrarian Reform Adjudication Board *vs*. CA, G.R. No. 165155, April 13, 2010) p. 191

Substitution of parties — Need not be formal when the heirs themselves voluntarily participated in the proceedings. (Regional Agrarian Reform Adjudication Board *vs*. CA, G.R. No. 165155, April 13, 2010) p. 191

PARTY-LIST SYSTEM ACT (R.A. NO. 7941)

Concept — Not designed as a tool to advocate tolerance and acceptance of any and all socially misunderstood sectors. (Ang Ladlad LGBT Party *vs.* COMELEC, G.R. No. 190582, April 08, 2010; *Corona, J., dissenting opinion*) p. 32

Marginalized and underrepresented sector — Elucidated. (Ang Ladlad LGBT Party *vs.* COMELEC, G.R. No. 190582, April 08, 2010; *Corona, J., dissenting opinion*)

(Ang Ladlad LGBT Party vs. COMELEC, G.R. No. 190582, April 08, 2010; Abad, J., separate opinion) p. 32

— Enumeration of sectors considered as marginalized and underrepresented in the Constitution and R.A. No. 7941 cannot be disregarded. *(Id.)*

— Enumeration of sectors is not exclusive. *(Id.)*

Purpose — Discussed. (Ang Ladlad LGBT Party *vs*. COMELEC, G.R. No. 190582, April 08, 2010; *Corona, J., dissenting opinion*) p. 32

Sectoral party accreditation — Applying party must prove by clear and convincing evidence its history, authenticity,

advocacy and magnitude of presence. (Ang Ladlad LGBT Party *vs.* COMELEC, G.R. No. 190582, April 08, 2010; *Abad, J., separate opinion*) p. 32

— Applying party must represent a narrow rather than a specific definition of the class of people they seek to represent. *(Id.)*

— Applying party should be characterized by a shared advocacy for genuine issues affecting basic human rights as these apply to the sector it represents. *(Id.)*

— Denial of the petition for registration of the petitioner party on religious ground is a violation of the non-establishment clause. *(Id.)*

— Every sectoral party-list applicant must have an inherent regional or national presence. *(Id.)*

— Exclusion of a party based on religious justification is a grave violation of the non-establishment clause. *(Id.)*

— Legal requirements for accreditation. *(Id.)*

— Moral disapproval, without more, is not a sufficient governmental interest to justify exclusion of homosexuals from participation in the party-list system. *(Id.)*

— The crucial element is not whether a sector is specifically enumerated, but whether a particular organization complies with the requirements of the Constitution and R.A. No. 7941. *(Id.)*

Incremental penalty rule — Defined. (Sy *vs.* People, G.R. No. 183879, April 14, 2010) p. 276

Service of — Accused's period of preventive suspension must be credited in his favour. (Quidet *vs.* People, G.R. No. 170289, April 08, 2010) p. 1

PLEADINGS

Verification — Purpose. (National Housing Authority *vs.* Basa, Jr., G.R. No. 149121, April 20, 2010) p. 471

— The addition of the words "to the best" before the phrase "of my personal knowledge" did not violate the requirement of Section 4 of Rule 7, it being sufficient that the affiant declared that the allegations in the petition are true and correct based on his personal knowledge. *(Id.)*

POSSESSION

Writ of possession — Explained. (National Housing Authority *vs*. Basa, Jr., G.R. No. 149121, April 20, 2010) p. 471

— It is an established rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is merely a ministerial function and the writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. *(Id.)*

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Doctrine of Presidential control over executive department — Not a basis to validate E.O. No. 378. (Atty. Banda *vs*. Hon. Ermita, G.R. No. 166620, April 20, 2010; *Carpio, J., separate concurring opinion*) p. 501

Power of control over executive offices and the power to reorganize the same — Basis. (Atty. Banda *vs*. Hon. Ermita, G.R. No. 166620, April 20, 2010) p. 501

— Executive Order No. 378 exceeds the parameters set in Section 31 of the Administrative Code of 1987. *(Id.)*

— Provisions in the Appropriation Law recognize the power of the President to reorganize even executive offices already funded by the Appropriation Act, including the power to implement structural, functional and operational adjustments in the executive bureaucracy and, in so doing, modify or realign appropriation of funds as may be necessary under such reorganization. *(Id.)*

— Section 31 of the Administrative Code of 1987 authorizes the President to restructure the internal organization of the Office of the President and to transfer functions or offices from the said Office to any other department or agency in the executive branch. *(Id.)*

Power to appoint — Ban on presidential appointments during the period stated in Section 15, Article VII of the 1987 Constitution does not extend to the Judiciary. (De Castro *vs.* Judicial and Bar Council, G.R. No. 191002, April 20, 2010) p. 657

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Presumption of regularity of notarized document — Not absolute. (Lazaro *vs.* Agustin, G.R. No. 152364, April 15, 2010) p. 310

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Action for reversion of public land — Objective. (Cawis *vs.* Hon. Cerilles, G.R. No. 170207, April 19, 2010) p. 367

— Shall be instituted by the Solicitor General or the officer acting in his stead. *(Id.)*

Homesteads — Conveyance in violation of the five-year prohibitory period for alienation is null and void. (Flores *vs.* Bagaoisan, G.R. No. 173365, April 15, 2010) p. 333

— Original certificate of title on the strength of a homestead patent; nature. *(Id.)*

Right to a government grant by operation of law — Conditions. (Flores *vs.* Bagaoisan, G.R. No. 173365, April 15, 2010) p. 333

Sales patent — Actual fraud in the acquisition of a title based on a sales patent need not be passed upon. (Cawis *vs.* Hon. Cerilles, G.R. No. 170207, April 19, 2010) p. 367

— Alleged fraud in the acquisition of a sales patent may be directly resolved by the court in the exercise of its equity jurisdiction. *(Id.)*

RAPE

Commission of — Lust is no respecter of time and place. (People *vs.* Pacheco, G.R. No. 187742, April 20, 2010) p. 624

Prosecution of rape cases — It is quite incredible for a young girl to publicly and falsely accuse her stepfather of rape in retaliation for a minor disciplinary measure. (People *vs*. Pacheco, G.R. No. 187742, April 20, 2010) p. 624

Qualified rape — Express admission by the accused as regards the age of the victim was sufficient to establish the minority of the victim. (People *vs*. Asis, G.R. No. 179935, April 19, 2010) p. 446

— Imposable penalty. *(Id.)*

Statutory rape — Accused's moral ascendancy over the victim, combined with the memories of previous beatings, was more than enough to intimidate her which rendered her helpless while she was being victimized. (People *vs*. Pacheco, G.R. No. 187742, April 20, 2010) p. 624

— Elements. *(Id.)*

REAL ESTATE MORTGAGE LAW (ACT NO. 3135)

Affidavit of publication — Rule on its evidentiary weight. (Phil. Savings Bank *vs*. Sps. Geronimo, G.R. No. 170241, April 19, 2010) p. 378

Extrajudicial foreclosure of mortgage — The party alleging non-compliance with the required publication of notice of sale has the burden of proving the same. (Phil. Savings Bank *vs*. Sps. Geronimo, G.R. No. 170241, April 19, 2010) p. 378

Notice of publication — Actual publication of notice of sale is not a part of sheriff's official functions. (Phil. Savings Bank *vs*. Sps. Geronimo, G.R. No. 170241, April 19, 2010) p. 378

— Importance. *(Id.)*

— Must be made in a newspaper of general circulation in the city where the property is situated. *(Id.)*

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Conclusiveness of judgment — Applies where there is no identity of causes of action but only identity of issues exists. (Hacienda Bigaa, Inc. *vs*. Chavez, G.R. No. 174160, April 20 2010) p. 574

— Estops the parties from raising in a later case, the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. *(Id.)*

Principle of — Concept. (Hacienda Bigaa, Inc. *vs*. Chavez, G.R. No. 174160, April 20 2010) p. 574

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— Imposable penalty. *(Id.)*

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Application — May be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. (TFS Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 166829, April 19, 2010) p. 356

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Functions — Do not include the actual publication of the notice of sale in an extrajudicial foreclosure of mortgage. (Phil. Savings Bank *vs*. Sps. Geronimo, G.R. No. 170241, April 19, 2010) p. 378

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Principle of — Elucidated. (De Castro *vs*. Judicial and Bar Council, G.R. No. 191002. April 20, 2010) p. 657

— Non-application of pertinent rulings of the court to other cases, absent any statement thereof to such effect, contravenes the principle which urges that all courts are to apply principles declared in prior decisions that are substantially similar to a pending case. (National Housing Authority *vs*. Basa, Jr., G.R. No. 149121, April 20, 2010) p. 471

— The Supreme Court, as the highest court of the land, may be guided but is not controlled by precedent. (De Castro *vs*. Judicial and Bar Council, G.R. No. 191002, April 20, 2010) p. 657

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Appointment of Members — Appointment during election per se implies no adverse effect on the integrity of the election, a full Court is ideal during this period in the light of the Court's unique role during the election. (De Castro *vs*. Judicial and Bar Council, G.R. No. 191002, April 20, 2010; *Brion, J., concurring and dissenting opinion*) p. 657

— Midnight appointments, while fully applicable to the lower echelons of the judiciary should not apply to the Supreme Court which has only 15 positions that are not even vacated at the same time. *(Id.)*

Powers — Supervisory authority over the Judicial and Bar Council; exemplified. (De Castro *vs*. Judicial and Bar Council, G.R. No. 191002, April 20, 2010; *Brion, J., concurring and dissenting opinion*) p. 657

— The Court has no power to amend and expand Sections 2, 3 (D) and 5 of R.A. No. 7941 (Party-List System Act) in the guise of interpretation. (Ang Ladlad LGBT Party *vs.* COMELEC, G.R. No. 190582, April 08, 2010; *Corona, J., dissenting opinion*) p. 32

— The power of the Supreme Court is not to create policy but to recognize, review and reverse the policy crafted by the political department when a proper case is brought before it. *(Id.)*

Vacancy in the Office of the Chief Justice — The practice of having an Acting Chief Justice in the interregnum is provided by law, confirmed by tradition. (De Castro *vs.* Judicial and Bar Council, G.R. No. 191002, April 20, 2010; *Carpio, J., dissenting opinion*) p. 657

TRADEMARK LAW (R.A. NO. 166)

Trademark infringement — A mere distributor cannot assert any protection from trademark infringement as it had no right in the first place to the registration of the disputed trademarks. (Superior Commercial Enterprises, Inc. *vs.* Kunnan Enterprises Ltd., G.R. No. 169974, April 20, 2010) p. 546

— Only a registrant of a trademark can file a case for infringement and the cancellation of registration of a trademark has the effect of depriving the registrant of protection from infringement, from the moment judgment order of cancellation has become final. *(Id.)*

— Title to the trademark is indispensable in a trademark infringement case. *(Id.)*

— What constitutes trademark infringement. *(Id.)*

Unfair competition — Defined. (Superior Commercial Enterprises, Inc. *vs.* Kunnan Enterprises Ltd., G.R. No. 169974, April 20, 2010) p. 546

— Elements. *(Id.)*

— There can be trademark infringement without unfair competition. *(Id.)*

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— Specifically deferred by law on pawnshops for tax years 1996-2002. *(Id.)*

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— Knowledge of a person's name is not necessary for proper identification. (People *vs.* Pajes, G.R. No. 184179, April 12, 2010) p. 157

— Perfect symmetry between the testimonies of the witnesses, while desirable, is not absolutely required for them to be deemed credible. *(Id.)*

— Single most important issue in a prosecution for rape. (People *vs.* Asis, G.R. No. 179935, April 19, 2010) p. 446

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